

General conditions of sale, supply and installation of Maschinenfabrik Möllers GmbH

The following conditions apply only to persons acting in their commercial or independent vocational capacity on conclusion of contract (contractors), and to public-law legal persons and public-law special funds.

1. Applicable conditions

All the goods and services we provide shall be subject to these conditions and to any separate contractual agreements. Any Purchaser's conditions of purchase to the contrary shall not become a term of the contract even by virtue of order acceptance.

2. Quotations

Our quotations shall be subject to confirmation unless we expressly determine in writing to the contrary.

3. Subject matter of the contract

3.1 The extent of our supply commitment shall be governed by our written order confirmation, or by our quotation if it was a binding quotation and has been effectively accepted and there is no timely order confirmation. Ancillary agreements and amendments shall be subject to our written confirmation.

3.2 Our product information and other documents such as illustrations, drawings, sketches and dimensions are not incorporated in the contract, and are merely indicative unless we expressly state they are binding. If the products are modified in the course of ongoing technical development after the quotation has been submitted, we may supply the technically modified version. In this regard we shall be entitled to vary illustrations, drawings, descriptions, colours, dimension and weight, quality and other data to the extent this is reasonable for the Purchaser, taking into account both sides' interests. If we may under no circumstances deviate from particulars and requirements stipulated, the Purchaser must indicate this to us when placing the order.

3.3 The Purchaser shall at its expense procure the approvals necessary to complete and operate the equipment delivered. If we assist the Purchaser in this, the Purchaser shall bear the expenses we thereby incur.

3.4 The Purchaser shall supply sufficient quantities of media needed to install and operate the plant we supply, in a non-aggressive form, at its expense.

3.5 The Purchaser shall on request provide us free of charge with an adequate number of original sample products before conclusion of contract. In particular the Purchaser gives an assurance it will use sack material suitable for automatic processing, flowable products, suitable packaging film, and pallets suitable for use on roller tables.

The Purchaser gives an assurance that the materials to be processed are stackable, palletizable and/or transportable goods (sacks, pallets, etc).

The Purchaser likewise guarantees that the actual dimensions of the goods permit correct pack pattern formation and stacking. The Purchaser shall ensure that there is a regular and continuous flow of material (sacks, pallets, board, etc).

Unless other temperature ranges are expressly indicated in the order confirmation, our plant and components are designed for ambient temperatures of +5°C to +35°C.

Unless the extent of documentation is specified in our order confirmation, we will provide two copies of the following documents in German or in English:

- Installation plan
- Electrical documentation
- Operating instructions
- Specifications
- Spare parts lists

3.6 If we are also supplying software, we grant the Purchaser a non-exclusive right to use the software supplied including its documentation. It is granted for use on the goods supplied for which it is intended. The software may not be used on more than one system.

The Purchaser may duplicate the software and revise, translate or convert it from object code into source code only to the extent permitted by law (sections 96 a ff. of the Copyright Act).

The Purchaser undertakes not to remove any manufacturer's information (especially copyright notices) or to change it without our prior express consent. The Purchaser may make two backup copies.

We or the software supplier retain all other rights to the software and documentation, including the copies. Sub-licences may not be granted.

3.7 In the event of extended storage and/or shutdown, the Purchaser undertakes to comply with the customary guidelines on storage and conservation for the plant/components supplied by us.

4. Export approval proviso

Quotations and order confirmations for installations abroad are submitted only on the condition precedent that the authorities responsible issue any export approvals required.

5. Copyright, confidentiality

We retain the proprietary rights and copyrights to samples, cost estimates, drawings, models, templates and similar information, of a physical and non-physical nature, in electronic or other form; they may not be disclosed to any third parties. Copies or other duplications may be made only for the agreed purpose. Neither originals nor duplicates may be handed or otherwise divulged to any third parties.

We undertake to disclose only with the Purchaser's consent any information and documents that the Purchaser indicates are confidential.

6. Prices

6.1 In the absence of a special agreement, prices are quoted ex works including loading in the works but excluding packing and other costs. Prices shall be subject to value added tax at the current rate, if applicable.

6.2 For services provided later than 12 months after conclusion of contract, we may charge any wage and/or material price increases arising since the quotation was submitted, at a reasonable overhead cost rate.

6.3 The minimum order value for goods and services provided by us is €250. If the order value is less than this, we shall be entitled to charge the following small quantity surcharges:

For orders with a goods value of less than €150 we charge a small-quantity surcharge of €75. If the goods value is less than €250, a small-quantity surcharge of €50 is charged.

6.4 If we receive no indication of desired changes within two weeks of the order confirmation being issued, the comprehensive production documents shall be prepared. We shall be entitled to charge reasonable additional costs for any order changes we receive after this date.

7. Payments, delay in payment, retention, rescission

7.1 In the absence of any special agreement, payment shall be due net immediately on receipt of invoice without any deduction free domicile.

7.2 Bills of exchange shall be accepted on account of payment only by prior written agreement. We shall charge discount charges from the due date of the claim onwards, regardless of the date of acceptance of the bill. We give no guarantee of timely collection or timely protest. If bills of exchange or cheques are not credited by the drawee on the due date, then all other claims by us on the Purchaser shall become due at that point in time. Any other payment due dates shall lapse. The same shall apply in the event of a claim not being paid when due.

7.3 In the event of delay in payment, we may charge default interest of 8 percentage points above the applicable base interest rate, and at least 11%. We reserve the right to substantiate a greater loss.

7.4 We may charge €10 for each reminder.

7.5 The Purchaser shall not be entitled to withhold payments or offset them against counterclaims unless its counterclaims are undisputed or recognised by declaratory judgment.

If it emerges after completion of contract that our claim for payment is jeopardised by the Purchaser's lack of solvency, e.g. if our credit sale insurance refuses cover for claims against the Purchaser in full, we may refuse the payment, and set the Purchaser a reasonable deadline by which to pay cash on delivery, or to provide collateral.

If the Purchaser refuses or the deadline is not met, we shall be entitled to withdraw from the contract and claim damages.

8. Delivery date, delivery term, delivery default

8.1 A delivery term or delivery date shall be binding only if our order confirmation states this to be the case.

8.2 The delivery term shall not start until the order confirmation is sent, and not before receipt of the drawings approved by the Purchaser, clearance of required documents, approvals and the information necessary to complete the order, clarification of all commercial and technical questions between the parties, and discharge of all the Purchaser's obligations such as payment of the agreed advance payment, or payments due from previous deliveries.

8.3 Delivery by us shall be subject to deliveries to us. We shall notify the Purchaser immediately if a delivery to us is omitted. If a delivery to us is omitted, the contract of sale shall be deemed void. We undertake no procurement risk. If failure to meet the delivery date is attributable to force majeure, industrial action, or other events beyond our control, the delivery time shall be extended accordingly. This shall also apply if such circumstances arise for subcontractors. We shall notify the Purchaser as soon as possible of the commencement and end of such circumstances.

Nor shall we be responsible for the above circumstances if they arise during an existing delay.

8.4 The delivery term or the delivery date shall be deemed met if the item to be delivered has left the works by the due date, or notification of readiness for dispatch has been given. Where acceptance is required, the acceptance date or alternatively notification of readiness for acceptance shall apply, except in the case of justified refusal of acceptance.

8.5 The Purchaser may withdraw from the contract without setting a time limit if performance as a whole becomes finally impossible for us before passage of risk. The Purchaser may moreover withdraw from the contract if a part of the performance of an order becomes impossible, and it has a legitimate interest in rejecting part delivery. The Purchaser shall otherwise pay the contract price attributable to the part delivery. The same shall apply in the case of inability to perform on our part. Item 13.2 shall apply in other respects.

8.6 If we are in default and this gives rise to loss for the Purchaser, it shall be entitled to demand lump-sum compensation for default. This shall amount for each week of delay to 0.5%, but not exceeding 5% in total of the value of that part of the overall delivery that because of the delay cannot be used on time or as stipulated in the contract.

If the Purchaser grants us a reasonable period of grace of at least three weeks for performance when we are in default (allowing for the exceptions defined in law), and we fail to meet this deadline, the Purchaser shall be entitled to repudiate the contract as provided by law.

Other claims arising from default in delivery shall be determined exclusively by item 13.2 of these conditions.

8.7 If dispatch or acceptance of the item to be delivered is delayed for reasons for which the Purchaser is responsible, we may charge it for the costs arising from the delay, but at least 0.7% of the invoice amount for each month, starting from one month after notification of readiness for dispatch or acceptance. All the goods and services provided by us after that date shall become due for payment at the same time.

When a reasonable period of grace has elapsed without result, we shall be entitled to use the delivery item for other purposes, and to supply the Purchaser within a reasonable extended timeframe.

8.8 Part deliveries shall be permissible in so far as they are reasonable for the Purchaser.

9. Receipt, acceptance, passage of risk, delay in acceptance

9.1 Even where delivery is free of charge, risk shall pass to the Purchaser no later than when the item to be delivered has left the works, even if part deliveries are made or we have undertaken further services such as dispatch costs or delivery and erection. If acceptance is required, this shall determine passage of risk. It must be performed immediately on the acceptance date, or alternatively after our notification of readiness for acceptance. An immaterial defect shall not entitle the Purchaser to refuse acceptance.

We shall be entitled to insure all deliveries against damage in transit at the Purchaser's expense. If the delivery shows transport damage when it arrives at the Purchaser's premises, or such damage subsequently become evident, the Purchaser shall immediately demand a written incident report from the carrier.

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9.2 If dispatch or acceptance is delayed or omitted because of circumstances for which we are not responsible, risk shall transfer to the Purchaser from the date of readiness for dispatch or acceptance. We undertake to take out insurance the Purchaser demands, at the expense of the Purchaser.

9.3 If material supplied by the Purchaser is damaged or becomes unusable at our premises, especially in the case of machining / processing or repair, we shall be liable only if the damage was caused by gross negligence, and only up to the extent of 10% of the value of processing, unless unlimited liability is required by law.

9.4 We shall insure customer material stored at our premises against fire, at our expense. The Purchaser must request in writing any further insurance cover, which shall be at its expense.

10. Export to the USA and Canada

We forbid direct and indirect export of our products to the USA and Canada.

The Purchaser shall indemnify us against any claims made against us from the USA and Canada as a result of exports to these countries, even if we consented to the export.

11. Retention of title

Until receipt of all payments under the supply contract and contracts previously concluded, we reserve the title and right of disposal of the items to be delivered. These payments shall include bills of exchange and cheques receivable, and open or current account payables. If our liability under a bill of exchange is established in connection with the payment, this retention of title shall not lapse until there is no possibility of us being subject to a claim under the bill of exchange.

The products supplied may still be used by the Purchaser in the course of ordinary business activity before complete settlement of our above claims, unless prohibition of assignment is or was agreed with third parties for the payables assigned to us in advance in item 11.4. Pledging and transfer by way of security are also forbidden beforehand, and resale is permitted only to resellers in the normal course of business on condition that the reseller receives payment from its customers that is immediately passed on to us. Any cost of interventions shall be borne by the Purchaser.

11.1 If the goods are seized at the Purchaser's premises, we shall be informed immediately that the goods seized are those that we supplied and are subject to retention of title, and sent a copy of the legal enforcement report and an affidavit.

11.2 Assertion of retention of title and seizure of the item supplied by us shall not be deemed rescission of the contract, unless the Instalment Sales Act applies.

11.3 The Purchaser hereby assigns to us all its claims against customers or third parties arising from resale, to the extent of the pro rata amount of our invoice including value-added tax and with all ancillary rights. This shall also apply in the event of the Purchaser transferring the purchase price claim to which it is entitled from the resale into a current account agreed with the customer or third party. We accept this assignment.

11.4 In the event of combination with a plot of land or movable property of a third party, and machining or processing under a contract for work, the Purchaser hereby assigns to us the wages payable and/or the resultant portion of joint ownership to the extent of our pro rata invoice amount including value-added tax for the retained goods involved. We accept this assignment.

11.5 The Purchaser is hereby authorised to itself collect the above assigned receivables in the ordinary course of business, provided it immediately passes on to us the amounts received.

The authorisation to collect the assigned claims shall lapse in the event of delay in payment, application for judicial or extrajudicial insolvency proceedings, or in the case of a cheque or bill protest.

11.6 If the items delivered have become material components of a plot of land, and the agreed payment dates are not met, the Purchaser undertakes to allow us to dismantle the items that can be removed without materially impairing the structure, and to transfer title to the items back to us. The Purchaser shall be bound to pay us damages if it prejudices our above rights. Dismantling and other costs shall be chargeable to the Purchaser.

11.7 If the realisable value of the collateral available to us exceeds our secured claims by more than 10% solely on the basis of this retention of title provision or together with other collateral, we shall to that extent be obliged to release collateral of our choice if the Purchaser so demands.

11.8 We shall be entitled to insure the item delivered against theft, fire, water and other damage, at the expense of the Purchaser, unless the Purchaser can show it has itself taken out insurance cover.

11.9 If the Purchaser acts in breach of contract, especially in the case of delaying payment, we shall be entitled after due notice to repossess the item delivered, and the Purchaser shall be obliged to surrender possession. Our assertion of retention of title and attachment of the item delivered shall not constitute rescission of the contract.

11.10 An application to institute insolvency proceedings shall entitle us to repudiate the contract and to demand immediate return of the item delivered.

12. Liability for defects in delivery (warranty)

We warrant as follows for material defects and defects of title in the delivery, excluding any further claims, subject to item 13.

Material defects

12.1 The Purchaser shall immediately after delivery examine the goods supplied, and immediately notify us in writing of any defects found. We shall disregard any defects complained of late contrary to the above duty, and they shall not be covered by the warranty. We shall only acknowledge customer complaints as such if they are made in writing. Complaints made to our field service staff or carriers or other third parties shall not constitute timely complaints in due form. The Purchaser may demand damages or reimbursement of wasted expenditure only in the event of grossly negligent or deliberate infringement of the duty to supply faultless items. It must substantiate the loss sustained in terms of cause and amount. The same shall apply to wasted expenditure.

12.2 After such notification, the Purchaser shall give us the necessary time and opportunity to undertake all repairs and replacements we deem necessary. We shall otherwise be exempted from liability for the resultant consequences.

12.3 Of the direct costs arising from repair or substitution, we shall bear (in so far as the complaint proves to be justified) the costs of the replacement part including dispatch free frontier, and the reasonable costs of installation and removal, and the costs of any necessary engagement of our installation engineers and workers within the Federal Republic of Germany if this can be reasonably demanded in the particular circumstances. In all other respects the Purchaser shall bear the costs. Changed parts shall become our property.

12.4 The Purchaser shall have the right to withdraw from the contract as provided in law if we, having regard for the exceptions provided in law, fail to meet a reasonable period of grace set for us to repair or replace a material defect. In the event of an immaterial defect, the Purchaser shall be entitled merely to a reduction in the contract price. No right to a reduction in the contract price shall otherwise be admitted.

12.5 No warranty is undertaken especially in the following cases. Inappropriate or improper use, deficient installation or commissioning by the Purchaser or third parties, fair wear and tear, defined wearing parts, defective or negligent treatment, unsuitable maintenance, unsuitable operating materials, defective construction work, unsuitable subsoil, chemical, electrochemical or electrical influences, unless we are responsible for them.

12.6 If the Purchaser or a third party reworks items incorrectly, the supplier shall not be liable for the consequences. The same shall apply to any modification of the item delivered undertaken without the supplier's prior consent.

12.7 If the Purchaser supplies parts or material for processing or as a contribution to completing an order, then no receiving inspection for non-obvious defects is made, in the absence of an express agreement to the contrary.

12.8 If the goods and services we supply include software, the following provisions shall also apply:

a. The warranty that the software provided does not contain reproducible defects. But the warranty is subject to contract-compliant use.

b. The Purchaser shall notify us immediately of any software bugs.

c. Bugs notified shall be rectified by us. If debugging proves impossible, we shall develop a workaround.

d. We do not warrant that the software provided meets the Purchaser's special requirements.

Defects of title

12.9 If use of the item delivered leads to infringement of industrial property rights or copyrights, we shall in principle at our expense procure for the Purchaser the right to continued use, or modify the item delivered in a manner reasonable for the Purchaser so as to eliminate the industrial property right infringement.

If this is not possible under economically viable conditions or within a reasonable time limit, the Purchaser shall be entitled to withdraw from the contract. We shall also be entitled to withdraw from the contract under the above preconditions.

We shall moreover indemnify the Purchaser from claims by the industrial property right holders concerns which are undisputed or recognised by declaratory judgment.

12.10 Our obligations indicated in item 12.10 are definitive for any industrial property right and copyright infringement, subject to item 13.

They shall exist only if:

- The Purchaser notifies us immediately of industrial property right and copyright infringements asserted

- The Purchaser supports us to a reasonable extent in resisting the claims asserted, and/or enables us to carry out the modifications indicated in item 12.9

- We reserve the right to take all defensive measures, including extrajudicial settlements

- The defect of title does not rest on an instruction of the Purchaser

- The legal infringement was not caused by the Purchaser autonomously modifying the item delivered or changing it in a manner not permitted by contract.

13. Liability

13.1 If the item delivered cannot be used by the Purchaser in the manner provided in the contract, through our fault in not implementing or incorrectly implementing suggestions and advice given before or after completion of contract, or through infringement of other contractual ancillary obligations, especially instructions for operating and maintaining the item delivered, then the provisions of items 12 and 13.2 shall apply accordingly, excluding any further claims by the Purchaser.

13.2 We shall be liable for damage other than to the item delivered itself, on whatever legal ground, only:

- In the case of intention

- In the case of gross negligence by the proprietor, the corporate bodies or management employees

- In the case of negligent injury to life, limb and health

- In the case of defects that we wilfully concealed, or the absence of which we guaranteed

- In the case of defects in the item delivered where there is a liability under product liability legislation for injury or damage to items in private use.

In the case of culpable violation of material contractual duties, we shall also be liable in the case of gross negligence by non-management employees or ordinary negligence, in the latter case limited to reasonably foreseeable losses typical for this type of contract.

No further claims shall be admitted.

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14. Our claim for damages in the case of the Purchaser failing to perform

If we are entitled to claim damages for non-performance, the lump-sum minimum loss to be compensated shall amount to 20% of the agreed price excluding value-added tax. The amount of the loss shall be increased if we can substantiate the higher loss, or reduced if the Purchaser can substantiate a lower loss.

15. Installation, commissioning

If installation and/or commissioning is included in the contract, the following conditions shall apply in addition.

16. Installation price

In the absence of an agreement to the contrary, the service shall be charged on the basis of time worked, at our applicable installations rates. Cost of materials shall be reimbursed in addition, as shall travel costs to and from work for our staff, the transport costs, customs, customs charges and transport insurance for luggage and tools, costs of procuring identification papers, passports and other cash expenditure such as telephone expenses, etc.

16.1 Settlement

The Purchaser shall certify the installation personnel's working, travelling and waiting time and work done, on the installation records presented by the installation personnel. If the Purchaser refuses to certify, or if it is not possible for some other reason for our personnel to receive the certifications, settlement shall be on the basis of the installation records completed by our personnel.

All ancillary work (such as brickwork, cutting work, plastering, carpentry, electrical, excavation work and decoration) are not included in the quotation unless they are listed in items separately, with quantity and price. Work not included in the order and that we carry out shall be reimbursed in addition at our cost rates. The same shall apply for additional costs we incur if a service is interrupted for reasons for which we are not responsible.

16.2 Technical assistance by the Purchaser

Technical assistance by the Purchaser must ensure that installation can be started immediately after arrival of the installation personnel, and without delay through to acceptance by the Purchaser. The Purchaser undertakes to provide a sufficient supply of product and consumables such as sacks, film, pallets, etc for continuous trial operation to run in the plant/components.

If the Purchaser does not fulfil its obligations, we shall be entitled but not obliged, after setting a deadline, to undertake those actions the Purchaser is obliged to take, in its stead and at its expense. The Purchaser shall also be obliged to assist in performing the service, at its expense.

It shall in particular:

- a. Provide a sufficient quantity of suitable manpower (bricklayers, carpenters, fitters and other skilled craftsmen, labourers) for the necessary time as required for the installation work;
- b. Undertake all excavation, construction, earthwork and foundation work on a timely basis;
- c. Provide the lifting tackle and workshop equipment necessary for transport, unloading or erection of machine units on time and in sufficient quantity;
- d. Perform the installation, laying of the necessary cable and pipeline systems (electricity, compressed air, etc) to the main infeeds. The Purchaser shall likewise make available the cable materials, cable racks and supporting parts (as far as the main in-feed points of the plant components);
- e. Provide energy and indirect material for mounting, running-in, testing and trialling and for operating the plant (electricity, compressed air, forklift trucks, loading equipment, etc);
- f. Provide suitable access for moving the assembly units and mobile cranes;
- g. Before commencement of installation work, provide the necessary information on the location of concealed electricity gas and water lines or similar infrastructure, and the necessary static data, without being specifically requested;
- h. Provide heating, lighting, energy and water including the necessary connections; provide the necessary dry, lockable, secure space for storing tools, and social rooms for the installation personnel;

i. Secure the transport of assembly parts to the assembly site, and protect the assembly site and materials against harmful influences of all kinds;

j. Point out any hazards (for example fire hazard in spaces or from materials) that could arise in connection with cutting, welding, thawing and soldering work, and take all safety measures (e.g. providing a fire watch, fire-fighting materials, etc);

k. Provide special clothing where there are difficult working conditions such as dangerous vapours, gases, acids, dust, etc. The same shall apply to protective clothing or protective equipment that is required because of special circumstances at the installation site, and that is not common practice in our industry. The installation personnel shall also be advised as to the important safety provisions for installation;

l. If our installation personnel are sick or suffer an accident, ensure immediate medical assistance is provided, and notify us immediately;

m. If the deployment site is outside the Federal Republic of Germany, procure the necessary approval for the installation personnel to enter the country, and any work permits necessary; procure in good time any official and other approvals required for export and erection of plant and equipment, inform our installation personnel of all obligations (notifications etc) in respect of local public authorities, and the existing safety rules; support them in dealing with the authorities, and help them acquire all permits ensuring them freedom of movement in the country, and guarantee their travel home at any time, taking their property with them.

16.3 Acceptance

The Purchaser shall be obliged to accept the installation work at once on notification of its completion. The plant shall be deemed to have been accepted after successful commissioning, even if the Purchaser was requested to but did not participate.

Self-contained parts of the works shall be accepted on request in particular. If the plant is wholly or partly in service, or if acceptance is delayed other than by our fault, acceptance shall be deemed to have been completed after expiry of two weeks from notification of completion.

The plant may be used before acceptance only with our express consent; parts of the plant already installed shall be deemed to be accepted when they are used.

Our liability for discernible defects shall lapse on acceptance, unless the Purchaser has reserved the right to assert a particular defect.

17. Limitation of liability in time

All claims by the Purchaser, on whatever legal ground, shall lapse in 12 months. The time limits stipulated in law shall apply to deliberate or wilfully deceitful behaviour, and in the case of claims under product liability legislation. They shall also apply to defects in a structure, and to items supplied that made a structure defective when used for that structure in accordance with their customary use.

For all claims the period shall start on delivery, in the case of work performance, on acceptance.

18. Binding character of the contract

The contract shall remain binding even if individual provisions in its other parts are legally ineffective. This shall not apply if adhering to the contract would constitute unreasonable hardship for a party.

Should any provision be ineffective in whole or in part, the contracting parties shall immediately seek to achieve the economic outcome intended by the ineffective provision by some other legally admissible means.

19. Place of jurisdiction, governing law

For all disputes arising from the contractual relationship, the action must be brought at the court of competent jurisdiction for Beckum. We shall however also be entitled to bring an action at the Purchaser's registered office.

The contractual relations shall be governed by the law of the Federal Republic of Germany. (All legal relations between us and the Purchaser shall be subject exclusively to the governing law of the Federal Republic of Germany for legal relations between domestic parties).

The Uniform UN Sales Convention and other conventions on the law on the purchase of goods shall however not apply.

Beckum, June 2006