

## **MÜLLER Terms and Conditions of Sale and Delivery (08/2021)**

for Business with Entrepreneurs and Public Clients

### **I. General provisions**

#### **Sec. 1 – Scope**

- (1) These Terms and Conditions of Sale and Delivery apply to all sales and/or deliveries by MÜLLER Umwelttechnik GmbH & Co KG (hereinafter "MÜLLER") to entrepreneurs, legal entities under public law, or public-law special funds within the meaning of Sec. 310 in conjunction with Sec. 14 of the German Civil Code (BGB) (hereinafter "Clients").
- (2) These Terms and Conditions are an element of all offers, notices of acceptance of contracts, and purchase agreements of MÜLLER. They are the exclusive contractual provisions with the relevant Client unless the contract or agreement in question contains particular individual provisions.
- (3) MÜLLER does not acknowledge any general terms and conditions of business of its Clients, even if MÜLLER does not expressly object thereto in the individual case.
- (4) These Terms and Conditions of Sale and Delivery also apply to all future transactions with the Client, even if MÜLLER does not expressly refer to them once again, and they apply until such time as MÜLLER provides notice that new general terms and conditions of business apply and these have been published on the MÜLLER website.
- (5) With the exception of managing directors, holders of general commercial power of representation, and holders of commercial power of attorney, employees of MÜLLER are not authorized to enter into contracts or agreements that deviate from these Terms and Conditions.

#### **Sec. 2 – Offers; conclusion of the contract**

- (1) Offers from MÜLLER are, in principle, not binding offers in the legal sense and should instead be understood as invitations to the Client to issue an offer (known as *invitatio ad offerendum*), unless the offer is expressly designated in writing as binding. The contract therefore does not come into existence upon the Client placing an order unless and until MÜLLER confirms the Client's order in writing. If MÜLLER issues a legally binding offer, the offer is subject to change, meaning that MÜLLER is entitled to revoke the offer at any time up until it is accepted by the Client unless an express period for which the offer is binding is mentioned in the offer. The Client is bound by its orders/offers for a period of two weeks unless a longer period for which these are binding has been agreed or is customary or the Client has expressly declared a shorter period for which these are binding in the offer.
- (2) Solely the written order confirmation from MÜLLER is operative with regard to the scope of delivery and the contractual terms and conditions. Side agreements always require the form stipulated in Sec. 20 (4) of these Terms and Conditions.
- (3) MÜLLER reserves all rights to cost estimates, drawings, plans, and other technical documents that are issued to the Client before or after the contract is entered into, particularly ownership and copyright. The Client is not permitted to use, copy, or reproduce these, or to turn them over to third parties or otherwise make them known, without MÜLLER's consent. Upon request, they must be returned to MÜLLER without delay.

**Sec. 3 – Prices**

- (1) Unless otherwise agreed, all prices mentioned by MÜLLER apply "net ex works," meaning exclusive of packaging, loading, insurance (particularly transportation insurance), customs duties and other levies, transportation costs, and value-added tax (VAT).
- (2) All prices are to be understood as being in euros unless MÜLLER has expressly indicated another currency in the order confirmation.
- (3) The prices stated for MÜLLER's delivery are based on the circumstances in effect at the time of the order confirmation. MÜLLER is bound by the prices agreed in the order for a period of four months from the conclusion of the contract. Should longer terms for delivery be agreed, MÜLLER is – in cases of an increase of the costs of material or labor – entitled to add a proportional cost surcharge based on MÜLLER's original calculation for the cost increase incurred. In the case of price increases of more than 15% of the net price, the Client is entitled to rescind the contract. Rescission must be declared by means of certified/registered mail without delay, and in any event within five working days after the price increase has been announced. Otherwise, the notice of rescission is void. In the event of rescission, the Client must pay reasonable remuneration for the performance rendered by MÜLLER up to that time to the extent that such performance cannot be returned.

**Sec. 4 – Foreign transactions**

- (1) Import duties, consular fees, and other levies/fees assessed based on laws or regulations that apply in the destination country are not included in the prices mentioned by MÜLLER. If, by way of exception, such a levy is expressly included in the price, the agreed price is increased accordingly if the levy rates have increased since the agreement due to unforeseeable circumstances for which MÜLLER is not responsible.
- (2) MÜLLER is only obligated to observe foreign packaging, weight, and customs regulations if the Client has provided MÜLLER with detailed written information on this in advance.

**Sec. 5 – Export and import authorizations**

Goods and technical expertise supplied by MÜLLER are intended for use in, and to remain in, the delivery country indicated by the buyer. Re-exporting of contractual goods – individually or in integrated form – is subject, as a basic principle, to the foreign trade provisions of the Federal Republic of Germany or the other delivery country agreed with the buyer, as the case may be. If the buyer intends to export items to another country, the buyer is obligated to obtain information on the relevant regulations independently and must seek out, in particular, the German provisions from the German Federal Office for Economic Affairs and Export Control, Frankfurter Straße 29-35, 65760 Eschborn/Taunus, Germany, and the U.S. provisions from the U.S. Department of Commerce, OEA, Washington, D.C. 20230, U.S.A. Regardless of whether the buyer states the final destination of the goods supplied, the buyer is obligated, on its own responsibility, to obtain any permits or authorizations that may be required from the relevant foreign trade authority with jurisdiction before it exports the goods. The buyer is responsible for compliance with the relevant provisions until the goods reach the final customer.

## II. Contractual duties

### Sec. 6 – Payment

- (1) MÜLLER's claims are due and payable immediately and without any deductions upon delivery of the goods. The Client is deemed to be in default of payment if it does not remit payment within 14 days after payment is due and an invoice is received. If the time of receipt of the invoice is uncertain, however, the Client is deemed to be in default no later than 30 days after the payment is due and the delivery is received. Nothing herein shall affect any earlier default of payment pursuant to the statutory provisions, particularly based on a reminder.
- (2) Unless expressly agreed otherwise, MÜLLER is not obligated to pay an advance. If, by way of exception, an obligation on MÜLLER's part to pay an advance has been expressly agreed, the provisions of Sec. 321 BGB apply, with the proviso that these provisions also apply if, after the contract is concluded, well-founded doubts regarding ability or willingness to pay arise or the Client has, after the conclusion of the contract, violated payment terms agreed in this or other contracts under this business relationship.
- (3) MÜLLER expressly reserves the right to reject checks and bills of exchange from Clients. Acceptance of such surrogate forms of payment always takes place on account of performance. Checks are accepted in all cases only on the condition that they be subject to discounting. Discounts, collection fees, and taxes on bills of exchange as well as other costs associated with the acceptance of such surrogate forms of payment are at the Client's expense. Credit notes concerning bills of exchange or checks always apply subject to receipt of the invoiced amount and are applied with the value as of the date on which MÜLLER can dispose of the value thereof.
- (4) If MÜLLER issues its invoice, after conclusion of the contract, to a party other than the other party to the contract with it (the Client), this must not, as a basic principle, be viewed as constituting any change of the other party to the contract and, in particular, must not be viewed as releasing the Client from its payment obligations. If MÜLLER's invoice is sent to a third party, this should be viewed as merely expressing consent to the third party assuming the debt, but not the possible assumption of the contract.
- (5) The Client will be charged €5.00 for each reminder issued after default occurs. Nothing herein shall affect the assertion of claims for damage and/or losses in excess thereof.
- (6) In the event of default, the statutory interest rate applies as the minimum interest rate.  
Where this can be determined, any higher average interest rate charged by German banks for open bank overdrafts applies. The Client is entitled to prove that no damage or loss has arisen due to the default, or that the damage or loss that has arisen has been lower in amount. Nothing herein shall affect the assertion of claims for damage and/or losses in a higher amount.

### Sec. 7 – Setoff; withholding of payment; assignment

- (1) The Client is entitled to the defense of unperformed contract (Sec. 320 BGB) without limitation if the statutory prerequisites are met.

The following provisions shall apply to other rights to withhold payment.

The purchaser has a right to withhold payment only regarding claims resulting from the same contractual relationship that are undisputed or have been established with final, binding legal

force or are ready for a decision. In this case, the purchaser can only withhold the remuneration payment in case of defects of parts of the service or delivery up to an amount that corresponds to the value of the defective delivery/service.

- (2) The Client can only offset claims of its own against the claims of MÜLLER if the Client's counterclaims are undisputed or have been established with final, binding legal force or are ready for a decision.
- (3) The Client is not entitled to assign claims arising out of the contracts to third parties except with MÜLLER's written consent.

## **Sec. 8 – Delivery**

- (1) Deliveries by MÜLLER shall be performed as soon as possible. The delivery times/delivery deadlines mentioned are not binding as a basic principle unless MÜLLER expressly confirms in writing that the time/deadline mentioned is binding. The factor determining whether a delivery time has been complied with is the time of sending ex works or warehouse or, if the goods are not sent in due time and MÜLLER is not at fault therefor, the time of notification that the goods are ready to ship. Compliance with time limits for deliveries presupposes timely fulfillment of all necessary cooperative acts, particularly timely receipt of all necessary information and documents, permits, authorizations, and approvals to be supplied by the Client, along with compliance with the agreed payment terms by the Client. If these prerequisites are not met and MÜLLER is not responsible for this, the time limits shall be extended by the period corresponding to the delay.
- (2) MÜLLER shall not be deemed to be in default of its obligations of delivery and performance in case of non-binding delivery or performance deadlines unless and until the Client issues a reminder to MÜLLER, stating a reasonable cure period, this time limit expires without producing the desired result, and the further statutory prerequisites for default are met.
- (3) Any promise of a delivery deadline by MÜLLER is always subject to the proviso that MÜLLER has itself received correct and timely supplies from its suppliers and the goods have arrived on time. Delivery delays or default of delivery through the fault of the suppliers of MÜLLER (without any fault on the part of MÜLLER itself) shall not constitute fault on the part of MÜLLER.
- (4) In the case of delays in delivery and performance as a result of *force majeure* or other circumstances that arise after conclusion of the contract and for which MÜLLER is not responsible, such as labor disputes or orders from government agencies, including if these arise on the part of suppliers or subcontractors of MÜLLER, the delivery time shall be extended by the duration of the impediment, plus a reasonable amount of lead time, with the total length of the extension amounting to not longer than six months. After this time limit expires, both Parties are entitled to rescind the contract. If either Party cannot reasonably be expected to continue to abide by the contract due to the delay, that Party is likewise entitled to rescind the contract.
- (5) MÜLLER is entitled to make partial deliveries to the extent that this is reasonable for the Client. In the event of permissible partial deliveries, MÜLLER is also entitled to issue partial invoices.
- (6) If the Client does not meet obligations of cooperation (e.g., delivery of items to be installed, retrofitted, or attached) or does not do so as agreed, the Client does not issue a release order as agreed, the goods are not sent or are sent later than as of the agreed delivery deadline at the

Client's instigation or based on circumstances for which the Client is responsible (for example because the Client does not comply with its payment obligations), or the Client is in default of acceptance based on other circumstances, MÜLLER is entitled to demand compensation for the damage and/or losses suffered and additional expenditures incurred as a result thereof. MÜLLER is entitled to charge a flat fee for damage and/or losses in the amount of 0.5% of the invoiced sum for each month, not to exceed 5% of the invoiced value. The Client is entitled to prove to MÜLLER that no damage and/or losses have been suffered or that the amount thereof has been considerably lower. MÜLLER reserves the right to prove that the amount of damage and/or losses suffered has been higher. Nothing herein shall affect any further rights, particularly the right to rescind the contract or demand payment of damages in lieu of performance. In these cases, the risk shall pass to the Client upon notification that the goods are ready to ship.

- (7) If MÜLLER falls into default of delivery, a cure period set for MÜLLER to perform must amount to four weeks in case of any doubt unless there are special circumstances that cause a shorter period to seem appropriate.
- (8) In the event of default of delivery or impossibility, MÜLLER is not liable for damages except pursuant to the provisions of Sec. 14 hereof.

#### **Sec. 9 – Obligations of cooperation; Client's obligations**

- (1) Where particular permits or authorizations, licenses (e.g., import or export licenses), or similar are required for the purchase agreement to be valid or for the performance of the contract, the Client must obtain these unless expressly agreed otherwise.
- (2) The Client is moreover obligated to perform all cooperative acts owed pursuant to the contract or under the principles of good faith in due time, and in particular to obtain necessary permits and/or authorizations and provide the items to be installed, retrofitted, or attached that are to be supplied by the Client.
- (3) MÜLLER is entitled to set a reasonable time limit for the Client to perform a cooperative act (e.g., requesting necessary permits or authorizations). If the time limit expires without producing the desired result, MÜLLER is entitled to rescind the contract. If necessary licenses, permits, or authorizations are not on hand by 12 months after the contract is concluded, MÜLLER is entitled to rescind the contract without setting a deadline beforehand. In these cases, MÜLLER can demand payment of damages for non-performance. Nothing herein shall affect any further rights.
- (4) Where release orders are involved, the Client is obligated to issue the release order within the agreed time limits. If no time limit is stipulated, MÜLLER is entitled to set a reasonable time limit for the Client to issue the release order if no release order has been issued by the Client within one month after the goods have been provided for release. If this time limit elapses fruitlessly, MÜLLER is permitted to bill for its goods or services, with this bill being due and payable immediately.

#### **Sec. 10 – Passage of risk**

- (1) Unless expressly agreed otherwise, MÜLLER provides its goods "ex works" (EXW Incoterms 2020). In this case, the risk passes to the Client when the delivery item is handed over by

MÜLLER for loading to the person or entity carrying out the transportation (e.g., shipping company, freight forwarder or similar) or, in the case of transportation by MÜLLER, at the start of loading activities, but no later than when the item leaves the plant in the place of performance (see Sec. 20 (2) of these General Terms and Conditions of Business). This applies even if MÜLLER bears the costs of the transportation or has assumed responsibility for additional services as well, such as setup or installation. The Client bears sole responsibility for the transportation, including loading and proper securing during transportation, at its own expense.

- (2) If the shipping takes place as of a delivery date later than the first possible delivery date, either at the Client's instigation or for another reason that lies within the Client's sphere, the risk passes to the Client at the time when the Client is notified that the goods are ready to ship.
- (3) Insurance for the delivery item, whether against theft, breakage, damage occurring in transit, fire and water damage, or other risks, shall be provided by MÜLLER only at the Client's express request and even then shall be provided at the Client's expense in all cases.
- (4) Return shipments of delivery items to MÜLLER shall be made – unless expressly agreed otherwise – at the Client's expense and risk.

#### **Sec. 11 – Retention of title**

- (1) MÜLLER retains title to the goods delivered until the complete fulfillment of the purchase price and any and all further existing or (at the time of conclusion of the contract) future claims against the Client arising from the business relationship. If there is an ongoing invoicing arrangement with the Client, the entirety of the goods subject to retention of title serves to secure the claim for payment of the balance. Title to the goods shall pass to the Client as soon as the purchase price has been paid and there are no further claims arising from the business relationship (current account reservation). Where the validity of this retention of title depends, under the laws of another state, on particular prerequisites or requirements as to form (registration, for example), the Client is obligated to fulfill the prerequisites and formal requirements for the retention of title to be valid at the Client's own expense.
- (2) The Client is entitled to sell or process the goods subject to retention of title in the usual course of business. This entitlement shall lapse if a request for initiation of insolvency proceedings concerning the Client's assets has been filed or the Client is obligated to file a request for insolvency proceedings or falls into default of payment.
- (3) If the goods subject to retention of title are resold on credit, the Client is obligated not to sell the goods except in exchange for adequate security that also covers the risk of insolvency on the purchaser's part (agreement of its own retention of title). The Client is not permitted to pledge the item sold, transfer title thereto by way of security, resell it for financing purposes (e.g., to leasing companies), or provide it to third parties for their use except with MÜLLER's prior written consent.
- (4) Any modification or processing of the goods subject to retention of title by the Client is always performed on MÜLLER's behalf as the processor within the meaning of Sec. 950 BGB. If the goods are processed, transformed, inseparably mixed or combined with other items that do not belong to MÜLLER, MÜLLER acquires co-ownership of the new item in proportion to the ratio of the value of the goods subject to retention of title (invoiced value, including VAT) to the value of

the other items processed at the time of the processing, transformation, mixing, or combination thereof. If combination or mixing takes place with an item of the Client that should be viewed as the primary item, with the result that the Client becomes the sole owner, it is hereby agreed that the Client shall transfer co-ownership of the end product to MÜLLER proportionally in accordance with the value of the initial materials at the time when they were mixed or combined. MÜLLER accepts the transfer of title. The Client shall keep the property (shared property) in safekeeping for MÜLLER free of charge. The provisions that apply to goods subject to retention of title apply accordingly to the products arising from processing, mixing, or combination.

- (5) The Client hereby assigns to MÜLLER by way of security its claim arising from the resale of goods subject to retention of title in the amount of the share corresponding to MÜLLER's shared title to or ownership of the goods. The assignment is additionally limited at a maximum to the amount of the claim (including VAT) that MÜLLER has against the Client based on the business relationship at the time of the resale, plus a security surcharge of 20%. This assignment applies irrespective of whether the goods subject to retention of title were resold without being processed or mixed or after being processed or mixed.
- (6) The Client is entitled to collect on the assigned claims in the usual course of business. MÜLLER is entitled to demand that the Client notify its customers of the advance assignment.
- (7) If the Client does not duly fulfill its obligations arising from the business relationship, and in particular if the Client falls into default of payment, or if the Client violates its obligations as a buyer subject to reservations or there are well-founded indications, based on circumstances that become apparent after the contract is concluded, that MÜLLER's payment claims arising from the business relationship with the Client are jeopardized,
  - a) MÜLLER is entitled to revoke the resale and further processing authorization and/or collection authorization and collect on the claims assigned to MÜLLER itself; and
  - b) the Client's right to possess the goods subject to retention of title lapses. In these cases, MÜLLER is entitled to retake possession of the purchased item at the Client's expense, and in particular to demand the surrender thereof by the Client or a third party. Without prejudice to the Client's obligations of payment and other obligations, MÜLLER is entitled to sell the goods subject to retention of title as well as possible, after the end of a reasonable time limit set by the Client, through direct sale or by way of an auction. The sale proceeds shall be credited toward the Client's obligations after the costs incurred for the sale are deducted. Any surplus shall be disbursed to the Client.

In the event that the collection authorization is revoked, the Client must transmit the information relating to the claim that is necessary for collection purposes to MÜLLER and support MÜLLER where applicable in the collection process.

- (8) The Client is obligated to treat the items owned (or co-owned) by MÜLLER with care at the Client's expense, to keep them safe, and to insure them adequately against the usual risks (theft, breakage, fire, water) and demonstrate upon request that this insurance has been taken out. The Client is moreover obligated to keep the purchased item in proper condition during the term of the retention of title and to have necessary repairs performed immediately by a specialized workshop authorized by MÜLLER. MÜLLER can request at any time that the Client take an inventory of the goods supplied by MÜLLER in their respective storage location and label the goods as being owned by MÜLLER. The client hereby assigns insurance claims and

claims against third parties with regard to damage, destruction, theft, or loss of goods to MÜLLER by way of security. MÜLLER hereby accepts this assignment.

- (9) The Client must notify MÜLLER of any access by third parties to the goods subject to retention of title in text form without delay after becoming aware thereof and must provide MÜLLER with all information and documents necessary in order to intervene. The Client is liable for the costs incurred to eliminate such access, particularly through the filing of third-party proceedings instituted to prevent the execution of a judgment, unless these can be obtained from the creditor asserting the claims.

### **III. Rights regarding defects; rescission; damages**

#### **Sec. 12 – Defects and rights regarding defects**

- (1) Subject to the particular provisions on sales of used cars set down in Sec. 19 hereof, MÜLLER warrants that the goods supplied do not have any significant defects upon the passage of risk.
- (2) Information in descriptions valid at the time of conclusion of contract regarding the scope of delivery, appearance, performance, dimensions and weights etc. of the purchased item does not constitute a warranty, but rather merely product descriptions. Unless expressly agreed otherwise, only these product descriptions are agreed as specific qualities. The illustrations, drawings, and information on quality, quantity, weight, dimensions, and performance contained in the offers and printed matter reflect only approximate values. Public statements, promotional claims, or advertisements of MÜLLER or by a third party do not constitute contractually agreed indications of the specific quality of the goods. A warranty in the legal sense is present only if MÜLLER expressly designates this as such in writing.
- (3) If an item that is specific with regard to its type undergoes any changes after conclusion of the contract with regard to design and construction, material and workmanship, shape, color, and/or weight and these changes are taken into account in the item delivered, these changes do not constitute defects in the purchased item unless they adversely affect the usability thereof and provided that the change is reasonable for the Client. Where the changes were not yet taken into account in the purchased item supplied, there is no claim on the Client's part to the implementation of any such changes.
- (4) MÜLLER is not liable based on public statements by third parties (including suppliers of MÜLLER or the manufacturer) if MÜLLER was not aware, nor should it have been aware, of the statement in question. MÜLLER is not liable based on public statements by MÜLLER or third parties designated by MÜLLER if the statement had already been corrected at the time of conclusion of the contract or if the Client cannot prove that the statement in question influenced its decision to purchase.
- (5) The conceptual design, construction, and workmanship of MÜLLER's facilities, systems, and devices are congruent with the EU safety and health requirements applicable to them at the time when they are placed on the market. MÜLLER is not liable for compliance with regulations that apply outside the EU. Reviewing these is a matter for the Client.
- (6) There is no warranty for defects and/or damage that have arisen because
  - a. on the Client's instructions, a certain design or construction or a certain material was chosen for the purchased item;
  - b. the Client installed or commissioned the purchased item improperly;

- c. the Client operated the purchased item improperly or used unsuitable operating materials or supplies;
  - d. the Client did not observe the operating or maintenance instructions;
  - e. the Client used the purchased item improperly or subjected it to excess strain;
  - f. the Client installed third-party parts (products from other manufacturers) although these were not approved by MÜLLER in the operating instructions or by way of a written declaration;
  - g. the Client dismantled or changed the purchased item without having MÜLLER's consent to do so; or
  - h. the Client improperly installed the purchased item in another item (even if the installation thereof in the other item was, as a basic principle, itself in accordance with the rules).
- (7) In the case of all services performed by MÜLLER, including work that is performed, the Client is obligated to check the goods for defects, including deviations in quality and quantity, without delay. MÜLLER's services are deemed to have been performed in accordance with the agreement if defects, if any, are not complained of pursuant to the following provisions:
- a. defects that are apparent upon inspection of the goods must be reported to MÜLLER in writing no later than within five working days after receipt of the goods and before the further processing / adaptation / use thereof;
  - b. hidden defects that could not be discovered upon inspection of the goods must be reported to MÜLLER in writing within five working days after discovery thereof.
- (8) For a complaint to be deemed to have been received in due time, it is sufficient if the notification thereof is sent in due time. Notes on delivery slips are not deemed to constitute complaints regarding defects. Transportation persons are not entitled to accept complaints regarding defects.
- (9) In the case of defects in the goods supplied, the Client is not permitted to withhold payment except in a scope that is appropriate in relation to the defects that have arisen. A reasonable scope is equivalent to the amount of the expected costs of remediation of defects plus a surcharge of 20%, but not more than the purchase price for the goods in question.
- (10) If there is a defect in the purchased item, MÜLLER is initially entitled, at its own discretion, to remedy the defect, either by rework/remediation work on the contractual item, by replacing the partial item that is the subject of the complaint or by supplying a different item that is free of defects. MÜLLER is entitled to demand that the Client send the goods back for the purpose of effecting a cure. The necessary costs of transportation for the return shipment of the goods shall be at MÜLLER's expense if (and only if) the complaint regarding defects is well-founded.
- (11) In the case of defects for which MÜLLER is required to bear responsibility under warranty law, the cure shall take place at MÜLLER's expense. Any old parts that are replaced shall become the property of MÜLLER when they are removed.
- (12) If MÜLLER determines, when the goods are checked, that the matter does not fall under the warranty, MÜLLER is entitled to charge the Client for any and all expenses incurred up until that point, particularly the costs of transportation, materials, and labor, at its customary general hourly rates. In this case, MÜLLER is entitled to charge a lump sum amount of €200.00 for damages for the labor involved in reviewing whether complaints regarding defects are well-

founded without there being any need for specific proof of damage. Nothing herein shall affect the right to assert claims for damages in a higher amount. The Client retains the right to prove that MÜLLER has not suffered any damage or loss, or that the damage or loss suffered has been significantly lower in amount. If the matter does not fall under warranty, MÜLLER shall inform the Client accordingly. If the Client wishes the work to be performed anyway, all further work shall be performed and billed by MÜLLER as a paid repair order on the basis of MÜLLER's repair terms. MÜLLER is under no obligation to perform the work. MÜLLER is permitted to refuse to perform the work.

- (13) In the processing of warranty procedures with foreign clients, MÜLLER does not, as a basic principle, assume any customs costs or other particular costs associated with the place of use or the country to which the purchased items are exported.
- (14) The Client can rescind the contract or reduce the purchase price if, within a reasonable time limit set by it, no attempt to effect a cure is made or the cure is impossible, is refused, fails, or is unreasonable. The time limit to effect a cure must amount to at least four weeks unless legitimate interests of the Client conflict with this. In case of doubt, the cure is not to be assumed to have failed until after the third failed attempt to effect a cure. The Client has no right of rescission due to minor defects. In case of partial performance, the Client cannot rescind the entire contract unless it demonstrably has no interest in the partial performance and the breach of duty is significant. The right of rescission and claims for damages regarding defects are subject to both the statutory prerequisites and the particular provisions of Sec. 13 (2) and Sec. 14 hereof.
- (15) The provisions of Sec. 16 hereof apply to the limitation periods for claims for defects.
- (16) Nothing herein shall affect rights of recourse by the buyer pursuant to Sec. 478 and/or 479 BGB.

### **Sec. 13 – Rescission**

- (1) The Client's right of rescission of the contract is subject to the statutory provisions, with the proviso that a right of rescission due to a breach of duty that does not consist in a defect enters into consideration only if a significant duty has been breached and MÜLLER is responsible for the breach of duty.
- (2) MÜLLER is entitled to charge the Client for the uses to be returned in the event of rescission in the lump sum of 3% of the purchase price per month unless the buyer proves that the uses derived were of lower value. Nothing herein shall affect MÜLLER's right to prove that the uses derived were of higher value.

### **Sec. 14 – Obligation to pay damages on MÜLLER's part**

- (1) MÜLLER is liable for damage and/or losses, provided that the other prerequisites for a claim are met,
  - in case of intent and gross negligence on the part of its corporate bodies or employees;
  - if MÜLLER has made any warranties, for the fulfillment thereof within the agreed scope;
  - in cases of liability under the German Product Liability Act (ProdHaftG);
  - in case of loss of life, bodily injury, or impairment of health; and

- in cases of non-waivable statutory liability.
- (2) In the case of conduct involving ordinary negligence, MÜLLER is liable in case of breach of a duty whose fulfillment renders the proper performance of the contract possible in the first place and in compliance with which the other party to the contract is generally permitted to trust (known as a cardinal obligation).  
  
Where MÜLLER is liable for conduct involving ordinary negligence, liability is limited to the damage and/or losses that MÜLLER was obliged to expect as being typical according to the circumstances known when the contract was concluded.
- (3) If MÜLLER is liable based on ordinary negligence (except in the cases covered by paragraph 1 above), liability is limited to two times the remuneration (i.e., the sales price or pay for work). Beyond that, MÜLLER is not liable in these cases for indirect damage and/or losses (e.g., production stoppage), consequential damage and/or losses due to defects, or lost profit.
- (4) The foregoing exclusions and limitations of liability also apply for the benefit of employees and vicarious agents of MÜLLER and other third parties whose services MÜLLER utilizes to perform the contract.
- (5) Suppliers of MÜLLER do not constitute vicarious agents of MÜLLER (no liability on MÜLLER's part pursuant to Sec. 278 BGB).
- (6) MÜLLER is not responsible for defects that are based on the fact that supplied parts are defective unless MÜLLER has furnished a warranty in this regard or the defect in the supplied part is obvious. MÜLLER is not obligated to inspect supplied parts.
- (7) The Client is obligated to notify MÜLLER in writing without delay of any damage and/or losses for which it plans to hold MÜLLER responsible and to enable MÜLLER to inspect the damage and/or losses where applicable.

#### **Sec. 15 – Limitation of claims**

- (1) The limitation period for claims regarding defects is one year. The start of the limitation period shall be in accordance with the statutory provisions.
- (2) Other contractual claims of the Client regarding breaches of duty shall lapse in one year. This does not apply to the Client's right to terminate the contract due to a breach of duty for which MÜLLER is responsible and that does not lie in a defect.
- (3) In deviation from the foregoing, the statutory limitation periods apply to the following claims on the part of the Client:
  - a. claims for damages arising from product liability, due to loss of life, bodily injury, or impairment of health, due to other damage and/or losses based on intentional or grossly negligent breach of duty by MÜLLER or its vicarious agents, and damage and/or losses arising from violation of essential contractual obligations through ordinary negligence; and
  - b. claims concerning malicious concealment of a defect.
- (4) Claims of MÜLLER against the Client shall become time-barred according to the statutory provisions.

#### IV. Miscellaneous

##### Sec. 16 – Industrial property rights and third-party copyrights

- (1) The Client shall have no claims regarding infringements of industrial property rights to the extent that the infringement in question is based on the items delivered having been produced according to designs or instructions provided by the Client or on the Client modifying the goods or using them together with products not supplied by MÜLLER or in a manner not foreseen by MÜLLER. In these cases, the Client must indemnify and hold harmless MÜLLER from and against all claims asserted by third parties based on the infringement of industrial property rights or copyrights.
- (2) With regard to the purchased items produced at its plants, MÜLLER is liable only for infringement of patents issued in Germany and only to the extent that MÜLLER supports the Client in the out-of-court and in-court dispute with the patent holders, reimburses the Client for the costs of proceedings, if any, and indemnifies the Client and holds the Client harmless from and against the claims for damages on the part of the patent holder that are acknowledged by way of a final, binding legal judgment. With regard to purchased items or parts of sales items that were not produced by MÜLLER at its own plants, the liability is limited to assignment of the claims to which MÜLLER is entitled against its suppliers.
- (3) Where a third party asserts legitimate claims against the Client due to the infringement of industrial property rights by goods provided by MÜLLER and used as agreed, MÜLLER shall, at its discretion and at its expense, initially obtain a right of use for the goods in question, modify the performance in such a way that the industrial property right is not infringed, or replace the goods in question. MÜLLER must be given sufficient opportunity for this. If MÜLLER's actions are unsuccessful, the Client can assert its rights pursuant to Part III of these General Terms and Conditions of Business.
- (4) The Client is obligated to notify MÜLLER of the claims asserted by third parties in writing without delay. It is not permitted to acknowledge infringements. Defensive measures or settlement negotiations are reserved exclusively to MÜLLER. If the Client discontinues using the goods for reasons of mitigating damage or other important reasons, the Client is obligated to notify the third party that such discontinuation of use does not mean that it is admitting to an infringement of property rights.

##### Sec. 17 – Replacement parts

- (1) The following special provisions set forth in paragraphs 2 through 4 apply to deliveries of individual replacement parts and accessories with trade-in of old parts at the special agreed trade-in price (known as a "trade-in delivery").
- (2) The old parts must be delivered to MÜLLER completely free of shipping charges and other costs and must not have any defects, particularly no welded or non-welded breaks, with the result that they can be reprocessed by MÜLLER.
- (3) If the trade-in part is shipped by MÜLLER before the Client has delivered the old part, MÜLLER shall initially charge the price that applies to new replacement parts instead of the trade-in price. Only after the old part arrives will the difference between the new and trade-in price be credited to the Client.

- (4) Old parts shall become MÜLLER's property upon delivery. The Client declares, by delivering these kinds of old parts, that the old part is its property or it is authorized and empowered to transfer title to that old part and no third-party rights thereto exist.

#### **Sec. 18 – Special provisions for sales of used vehicles**

- (1) The Client is obligated to take delivery of the used vehicle on the agreed delivery date. If no such date has been determined, the Client is obligated to take delivery of the used vehicle without delay, and in any event within eight days after MÜLLER has provided notice that it is ready for pick-up.
- (2) The Client is moreover obligated to transfer title to the used vehicle without delay after taking delivery thereof.
- (3) Notwithstanding the provisions of Sec. 12 (1) of these Terms and Conditions, used vehicles are sold "as is" and – subject to the provisions of Sec. 444 BGB – excluding any and all liability for material defects. MÜLLER is also not obligated to check the used vehicle or individual parts thereof for material defects unless expressly agreed otherwise by the Parties.

#### **Sec. 19 – Information under the German Act on Alternative Dispute Resolution in Consumer Matters (VSBG) for alternative dispute resolution in consumer matters**

MÜLLER is neither obligated nor willing to participate in dispute resolution proceedings before a consumer arbitration board. MÜLLER therefore does not participate in dispute resolution proceedings before a consumer arbitration board.

#### **Sec. 20 – Final provisions; choice of law; place of jurisdiction**

- (1) The laws of the Federal Republic of Germany apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (2) The place of performance for all services under this contract is the relevant plant of MÜLLER designated by MÜLLER in the order confirmation. If, according to the agreements between the Parties, shipping is to take place from a third party's plant, then that plant is the place of performance.
- (3) The place of jurisdiction for all disputes arising from this contractual relationship is Detmold. For its part, MÜLLER is also entitled to bring a legal action in the Client's headquarters.
- (4) Contractual amendments, addenda, and side agreements are not valid unless set forth in text form. This also applies to this clause requiring the text form in particular.
- (5) Should one or more provisions of these Terms and Conditions of Sale and Delivery be or become invalid or unenforceable, or should the provisions hereof contain a gap, the validity of the remaining provisions shall be unaffected by such circumstance. The invalid, unenforceable, or incomplete provision shall be replaced by a provision that most closely approximates the spirit and purpose of the intended provision from an economic perspective.
- (6) Data necessary to process business transactions shall be stored by MÜLLER in a central location.