

Terms & Conditions of Sale of MÜCHER DICHTUNGEN GmbH & Co KG

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



**MÜCHER
DICHTUNGEN®**

1. Scope of application

The following Terms and Conditions shall govern all business transactions and customer 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 and Conditions, shall also be ensured by fax and e-mail.

3. Exclusion of contradicting provisions/Statement of completeness

3.1 Exclusivity clause

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

3.2 Statement of completeness

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

4. Written order acknowledgement

Orders shall be deemed binding only upon written confirmation in the order acknowledgement by Mücher.

Any oral agreements deviating from this shall be effective only if confirmed in writing by Mücher, in particular, if such deviations are agreed prior to conclusion of the contract.

The size of delivery shall be defined in the written order acknowledgement by Mücher. If Mücher submits an offer which is valid only for a limited period and the Customer accepts this offer within this period, said offer shall be binding also, if the order is not confirmed in due time.

5. Customer's offer and bindingness of information

5.1 Term of offer

If (by way of exception) a Customer's order is to be considered an offer acc. to § 145 BGB, Mücher may accept this offer within two weeks of receipt.

5.2 Bindingness of Information

The illustrations, drawings, weights and dimensions printed or reproduced in Mücher's catalogues or on the Internet (www.muecher.com) constitute merely approximate information. The documentation included in an offer, e.g. illustrations, drawings, weights and dimensions, shall be binding only, if the data stated in the offer or the offer itself have expressly been specified as binding in writing.

6. Proprietary rights and copyrights, confidentiality

6.1 Proprietary rights

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

6.2 Copyrights and industrial property rights

Any copyrights and other industrial property rights in the documentation and information mentioned in clause 6.1 shall also remain the property of Mücher.

6.3 Confidentiality clause

The documentation and information mentioned in clause 6.1 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.

6.4 Obligation to return documentation

If the order is not placed, the documentation mentioned in clause 6.1 shall be returned upon Mücher's request.

7. Indication of prices and price agreements

7.1 Calculation base for indication of prices

The prices of Mücher are quoted in euros plus the statutory value-added tax at the rate applicable. Packaging, freight, postage, and insurance costs will be billed separately.

7.2 Delivery free domicile

Mücher shall deliver standard products from the applicable pricelist or product list free domicile, if a shipment at a value of 1,500.00 € net is taken completely.

7.3 Price adjustment acc. to § 315 BGB

Mücher will adjust prices only within the scope of § 315 BGB.

7.4 Reasons for price adjustments

Mücher shall retain the right to adjust prices acc. to clause 7.3, should manufacturing processes or manufacturing costs change with respect to the order period, in particular, if the calculations change due to cost increases for raw materials, wages or freights in the period between receipt of order and delivery.

8. Packing and packaging material

8.1 Cost of packaging material

The prices do not include the cost of packing and packaging material. These will be billed separately at cost price.

8.2 Take-back of packaging material

Packing and packaging material shall be taken back by Mücher at the place of fulfilment, which is Ennepetal. The Customer shall bear the transport cost.

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

9.1 Maturity

In the absence of a special agreement, payment shall be made without any deductions within 30 days of receipt of invoice.

9.2 Default in payment

The Customer will be in default of payment 30 days after receipt of invoice and maturity, without a reminder being required. For any reminder sent to the Customer a handling fee of € 20.00 (net) will be charged.

9.3 Default interest and damage caused by default

The statutory interest regulations shall apply in case payment is delayed. Mücher shall retain the right to claim compensation for damages caused by default exceeding the statutory interest rate.

9.4 Immediate maturity in case of default

In the event of default payment and justified doubts about the capacity to pay or the creditworthiness of the Customer, Mücher shall be entitled to declare immediate maturity of all claims relating to the business relationship.

9.5 Securities and immediately due down payments

In the event of default payment and justified doubts about the capacity to pay or the creditworthiness of the Customer, the Customer – irrespective of other rights on the part of Mücher – shall be obliged, upon written request, to provide adequate securities within six workdays or, upon request, to make down payments for outstanding deliveries and outstanding payments within six workdays.

9.6 Customer's rights of retention and set-off

The Customer shall have the right to retain payment and/or offset counterclaims, also in the case of notification of defects or warranty claims, only if his counterclaims are undisputed and have become legally effective.

9.7 Bills of exchange and cheques as means of payment

Bills of exchange and cheques shall be accepted only, if this was agreed and only as conditional payment and provided that they can be discounted. Any cost and expenses relating to bills of exchange shall be borne by the Customer and shall be due in cash upon negotiation or presentation. Any warranty that the bill of exchange or cheque will be presented in due time for protest shall be excluded.

9.8 Withdrawal from contract and compensation for damages in the event of refusal to pay

If the Customer who is in delay of payment refuses to pay, Mücher shall be entitled to withdraw from the contract or claim damages. The amount of damages to be claimed shall be 50 % of the order total. Mücher shall be entitled, with the obligation to present evidence, to claim damages exceeding this amount. The Customer shall retain the right to present evidence that the damage is less than the lump sum of 50 % of the order total.

10. Delivery periods

10.1 Bindingness of indicated delivery periods

The delivery periods and dates indicated by Mücher shall be binding only, if specified as such in the written order acknowledgement.

10.2 Commencement of delivery period

The indicated delivery period shall commence upon dispatch of the order acknowledgement by Mücher.

10.3 Compliance with delivery periods and dates

The act relevant for compliance with the agreed periods and dates of delivery shall be the notification by Mücher that the goods are ready for shipment or collection. If a calendar week is agreed on as date of delivery, the date of delivery shall be deemed complied with, if the notification by Mücher that the goods are ready for shipment or collection is received by the Customer on the last workday of the respective week.

10.4 Period of delivery for sale to destination acc. to Customer's instructions

Clause 10.3 shall apply correspondingly, regarding compliance with periods and dates of delivery for sale to destination according to the Customer's instructions acc. to § 447 BGB. The period or date of delivery shall be deemed complied with, if Mücher handed over the item of delivery to the forwarder, the carrier, or the person determined to carry out the transport, at the agreed time.

10.5 Extension of delivery period in the event of force majeure and unforeseen events

The indicated periods and dates of delivery relate to a normal course of business and shall be extended accordingly, if:

10.5.1 submission of documents, down payments, or other prior obligations are delayed by the Customer;

10.5.2 the Customer wishes any alterations after the contract was concluded;

10.5.3 any unforeseen events occur at Mücher or Mücher's suppliers, e.g. operational breakdowns, interventions by public authorities, problems with energy supply, delayed delivery of essential materials, strike, lockout, and similar events which are beyond Mücher's control.

11. Partial shipments

Partial shipments shall be permitted to a reasonable extent. They will be billed separately.

12. Increased or reduced shipments due to manufacturing reasons

Within a tolerance of 10% of the total quantity ordered, increased or reduced shipments due to manufacturing reasons shall be permitted. The total price will change according to their volume.

13. Call orders

Shipments ordered on call shall be taken within six months of order acknowledgement. Upon expiry of this period Mücher shall be entitled to ship the goods not called off yet to the Customer. Regarding the shipping cost, clause 5 shall apply accordingly.

Furthermore Mücher shall be entitled to exercise the rights acc. to § 375 clause 2 HGB.

14. Customer's default in taking delivery

14.1 Customer's obligation to take delivery

The Customer shall be obliged to take the delivery item without any delay upon information that the goods are ready for shipment, also in case of minor defects, thereby retaining his rights under clause 18.

The risk of use and application shall be borne by the Customer, unless Mücher assured a defined use or application.

14.2 Reimbursement of storage cost

If shipment is delayed on the Customer's request, Mücher shall be entitled, beginning with the first day of the month following the ready-for-shipment note, to charge cost incurred for storage at Mücher's premises at the rate of 0.5 % of the net amount of invoice for each beginning week. The Customer shall retain the right to prove that the actually incurred storage cost has been less than the flat rate charged by Mücher.

14.3 Other disposal of the item of delivery

Mücher shall have the right, after setting a deadline and upon fruitless expiry of such deadline, to dispose of the item of delivery in another way and supply the goods to the Customer with a correspondingly extended period of delivery.

15. Choice of way of shipment

15.1 Choice of way of shipment in the absence of agreement

Unless agreed otherwise, Mücher shall choose the type and way of shipment to Mücher's best discretion.

15.2 Exclusion of liability for shipment via express delivery service

If the Customer wishes shipment via an express delivery service and delivery by a certain hour of the day, Mücher shall be liable only, if the item of delivery was handed over to the express delivery service with delay. Furthermore § 447 clause 2 BGB shall apply.

16. Assumption of risk and insurance

16.1 Passing of risk

The risk shall pass to the Customer upon dispatch of the delivery items to the Customer at the latest. This shall apply also, if parts of deliveries are shipped or if Mücher has also taken over any other obligations, e.g. transport to Customer.

16.2 Assumption of risk with acceptance requirement

If an acceptance inspection is required, this shall be decisive for the passing of risk. It shall be carried out immediately at the date when delivery is taken, alternatively upon information

by Mücher that the goods are ready for acceptance. The Customer shall not be entitled to refuse acceptance for a minor defect.

16.3 Insurance of delivery item

On the Customer's request and at the Customer's expense, Mücher will insure the shipment against theft, breakage, damages resulting from transport, fire and water, and other risks to be covered by insurance.

16.4 Passing of risk in the event of Customer's default in taking delivery

If shipment is delayed because of circumstances to be justified by the Customer, the risk will pass to the Customer from the day the items are ready for shipment. Regarding insurance of the delivery item, clause 16.3 shall apply correspondingly.

16.5 Passing of risk in the event of refusal to accept delivery

If the Customer refuses to accept delivery for minor defects of the delivery item, the risk will nevertheless pass to him, with his rights under clause 18 remaining unaffected.

17. Reservation of title

17.1 Expanded reservation of title

Mücher shall retain title to all delivery items until all claims against the Customer arising out of the business relationship, including such claims which may occur in the future, also from contracts which were concluded at the same time or later, have been paid. The reservation of title shall end when, at the time of payment, all outstanding claims covered by this clause have been paid.

17.2 Extended reservation of title

If the Customer resells or processes the items delivered by Mücher before payment has been made, the title, in so far as it is extinguished, shall pass to the Customer's claims resulting from reselling or processing of the items.

17.3 Customer's obligations

The Customer shall be obliged to treat the delivery items with due care, in particular, he shall be obliged to sufficiently insure them, at his expense, against damages resulting from theft, breakage, fire or water, based on their original value. If the Customer does not comply with his obligation to insure the delivery items, Mücher shall be entitled to insure them against damages resulting from theft, breakage, fire or water, or other damages, at the Customer's expense.

17.4 Restraint on Customer's disposal

The Customer shall neither pawn the delivery item nor transfer ownership by way of security. In case the item is seized or confiscated, or any third parties may dispose of it, the Customer shall inform Mücher without any delay to enable Mücher to file a lawsuit acc. to § 771 ZPO. Should the third party not be in a position to reimburse Mücher the costs of judicial and

extrajudicial proceedings of a lawsuit acc. to § 771 ZPO, the Customer shall reimburse MÜCHER the cost incurred to a reasonable extent.

17.5 Prerequisites for withdrawal from contract

If the Customer is partly or completely in default with payment of a claim secured by reservation of title, or if his financial situation is deteriorating in a way that the purpose of the contract is endangered, MÜCHER shall be entitled, following a reminder, to withdraw from the contract and to claim that the goods be returned due to reservation of title. This shall also apply, if the Customer acts in breach of contract in any other way. After taking back the delivery item MÜCHER shall have the right to utilise it. The proceeds gained from this shall be offset against the Customer's liabilities – with deduction of fair and reasonable cost incurred thereby.

17.6 Assignment of claims

The Customer shall be entitled to further alienation of the item of purchase in the ordinary course of business; however, already at this moment, he will assign to MÜCHER all claims to the full amount of invoice (including VAT) which accrued to him from the sales to his purchasers or any third parties, irrespective of the fact, whether the item of purchase is resold without or after being processed. The Customer shall remain entitled to collect this claim also after assigning it. MÜCHER's entitlement to collect the claim shall remain unaffected by this. However, MÜCHER commits to refrain from collection of this claim, as long as the Customer meets his payments from the proceeds gained, is not in delay of payment and, in particular, has not filed a petition to institute composition or bankruptcy proceedings, and has not ceased payment. Should this, however, be the case, MÜCHER may demand that the Customer reveal the claims assigned and the debtors thereof, give all data and perform all transactions required for collection, hand over all related documents and inform the debtors (third parties) of the assignment.

17.7 Acquisition of ownership

The processing or transformation of the item of purchase by the Customer shall always occur on behalf of MÜCHER. If the item of purchase is processed with other items not owned by MÜCHER, MÜCHER will acquire co-ownership of the new item in proportion of the value of the item of purchase (final amount of invoice, including VAT) to the other items being processed, at the time of processing. Generally, the provisions that were defined for the item of purchase delivered with reservation shall also apply to the item resulting from processing.

17.8 Intermixture

If the item of purchase 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 of purchase (final amount of invoice, including VAT) to the other items being mixed with it, at the time of intermixture. If the items are mixed in a way that the Customer's item is to be regarded the main item, it is agreed that the Customer shall transfer proportional co-ownership to MÜCHER. The Customer shall take care of the sole ownership or co-ownership of MÜCHER resulting from this.

17.9 Attachment

The Customer shall also assign to Mücher the claims for securing the claims against himself which arise against a third party by attachment of the item of purchase to buildings or to the ground.

17.10 Release of securities

Mücher commits to release the securities Mücher is entitled to, if requested by the Customer in writing, in so far as the realisable value of Mücher's securities exceeds the claims to be secured by more than 10%; Mücher may decide which securities will be released.

18. Warranty and exclusions from warranty

18.1 Obligation to give notice of defects

Warranty claims on the part of the Customer require that he has, in due form, complied with his obligations regarding examination and notification of defects according to § 377 HGB.

18.2 Customer's right of choice

If a defect occurred on the item of purchase, the Customer may claim, at his choice, that the contract be performed subsequently by rectification of the defect, or that a new item without defects be delivered. If shipments containing defective items were delivered, Mücher shall be given the opportunity to sort out such defective items. If rectification of a defect is agreed, Mücher commits to bear all costs arising from the rectification of the defect, in particular costs regarding transport, travel, work, and material, unless they increase due to the fact that the item of purchase has been transported to a place other than the place of fulfilment.

18.3 Failure of subsequent performance

If subsequent performance fails, the Customer shall retain the right to reduce the purchase price or withdraw from the contract.

18.4 General limitation of liability

Mücher shall be liable within the limits of the statutory provisions, if the Customer claims damages due to intent or gross negligence, including intent or gross negligence on the part of Mücher's representatives or agents. Unless Mücher is blamed for wilful breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.

18.5 Limitation of liability in the event of violation of major contractual obligations

Mücher shall be liable within the limits of the statutory provisions, if Mücher culpably violates a major contractual obligation; in this case, however, liability for damages shall be limited to the foreseeable, typically occurring damage.

18.6 Full liability

Liability arising out of culpable injury to life, body, or health shall remain unaffected; this shall also apply to mandatory liability under the German Product Liability Act.

18.7 Exclusion of liability

Unless specified otherwise in the above clauses, any liability shall be excluded.

18.8 Limitation period

The limitation period for warranty claims regarding sealings offered and/or sold exclusively under the brand/name of "Mücher" by Mücher shall be five years. For any other products the limitation period shall be 24 months, unless a different limitation period is expressly agreed in writing for these products. The limitation period shall begin with the passing of risk.

18.9 Delivery recourse

The limitation period in the event of delivery recourse acc. to §§ 478, 479 BGB shall remain unaffected; it will end two months after the date on which the Customer fulfilled the warranty claims on the part of his customer, but not later than five years after delivery was made to the Customer.

18.10 Time required for remedial work

Mücher shall be conceded an adequate period of time for remedial work or new delivery of defined items under the warranty conditions.

18.11 Non-existence of quality defect

A quality defect does not exist and, consequently, Mücher will not take over any warranty for defects, if such defects occurred due to improper or inadequate use, faulty installation or commissioning by the Customer or any third parties, natural wear, faulty or careless treatment, improper equipment, substitute materials, faulty construction work, unsuited foundation, or chemical influences. Mücher shall not be liable for any alterations or maintenance work performed by the Customer or any third parties improperly or without the prior consent of Mücher. This shall apply correspondingly, if the goods supplied by Mücher are not used according to their specified purpose, or if their utilisation deviates from the defined type of operation.

18.12 Reference to suppliers for major third-party products

Regarding major third-party products, Mücher's warranty shall be limited to cases where the Customer, in a first step, was not successful in legal proceedings to enforce his claims against the supplier.

19. Joint liability

19.1 Exclusion of claims for damages

Any claims for damages on the part of the Customer, in particular claims for compensation of damages which have not occurred on the very goods delivered by Mücher, shall be excluded, irrespective of the legal reasons asserted. Any liability for damages exceeding the liability specified in clause 18 – also irrespective of the legal nature of the claim asserted – shall be excluded. In particular, this shall apply to damage claims arising out of culpa in contrahendo, out of other violations of obligations, or out of tortious claims for compensation of property damage acc. to § 823 BGB.

19.2 Exclusion of claims for reimbursement of expenses

The limitation acc. to clause 19.1 shall also apply, if the Customer, instead of asserting damage claims in lieu of performance, claims reimbursement of useless expenses.

19.3 Exclusion of personal liability for damages

If and in so far as liability for damages is excluded or limited by Mücher, this shall also apply to the personal liability for damages on the part Mücher's employees, representatives and agents.

20. 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 customer relationship and contractual relationship shall be the domicile of Mücher, Frechen.

21. Applicable law

21.1 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) customer 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.

21.2 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.

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

22.1 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 Customer, also as part of a procedure for enforcement of a bill of exchange or cheque, shall be the domicile of Mücher, Frechen.

22.2 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 Customer 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.

22.3 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 Customer 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.

22.4 Waiver

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

23. 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.