

# MUNDER Engineering GmbH & Co. KG

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## General Conditions of Business

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#### 1. Scope of the conditions

- a) The supplies, services and offers made by the supplier are made exclusively on the basis of these business conditions. These conditions shall furthermore apply to all future business relations, even when they are not agreed again explicitly. These conditions are deemed to have been accepted at the latest when the goods or service are accepted. Counter-confirmations by the customer, which refer to his own business or purchasing conditions, are hereby rejected.
- b) Variations of these business conditions are only effective if they are agreed in writing or if the supplier confirms the variation in writing.

#### 2. Offers and completion of the contract

- a) The supplier's offers are provisional and are not binding. They are prepared in accordance with the documentation presented to the supplier and the information given to him. Any statements made by the supplier before the binding confirmation of the contract as to performances, weights, rotary speeds, power demands, current, compressed air consumption etc. are, up to the time of final technical clarification and the binding contractual confirmation, to be considered as preliminary and as non-binding. Offers made by the supplier may only be used for bills of materials with his agreement. In such a case, if the order is not placed with the customer, the supplier shall have the costs incurred by the preparation of the offer reimbursed to an appropriate level by the customer.
- b) The placement of all orders requires the written or faxed confirmation of the supplier for their legal effectiveness.
- c) The conditions applying to supplies and services apply equally to extensions, alterations and supplementary agreements.
- d) The supplier's drawings are to be checked by the customer for the feasibility of implementation and in the light of the local structural dimensions. The supplier is to be informed without delay of any inconsistency. If this is omitted, the supplier shall not accept liability for any incorrect fabrication or for any costs arising therefrom.
- e) The supplier retains the right to make technical alterations to the equipment, inasmuch as they arise from new knowledge or for some other reason, and provided the original purpose of the equipment to be supplied and the possibilities of its application are not restricted. The supplier is not obliged to make corresponding constructional alterations to devices which have already been delivered.

#### 3. Scope of the contract

- a) The scope of the goods to be supplied and of the contract is to be determined from the supplier's binding written confirmation of order, the parts lists and the detailed drawings. Supplementary agreements and alterations require the supplier's explicit written confirmation.
- b) If subsequent alterations or extensions to the original agreement are called for by the customer these additional or altered performances will be charged for individually at the supplier's applicable sales prices.  
This applies also to alterations or extensions made necessary through incomplete or incorrect information either supplied by the customer or in the documentation supplied by him.

#### 4. Prices

- a) The prices quoted by the supplier are ex works. Additional costs such as for example packaging, freight and carriage, customs duties, carriage to the final location or unloading charges are not included. All prices are subject to the addition of VAT. Any packaging which may be required and which is applied by the supplier to prevent damage in transport will be charged for at cost price and not accepted for return.
- b) The supplier is entitled to adjust the prices in the light of pay and materials price increases which may have arisen in the meantime for call-off contracts, or for contracts whose execution in accordance with the original agreement may be delayed by the customer to a date which is more than four months after the time of the binding contractual confirmation.

#### 5. Conditions of payment

- a) For contractual values up to EUR 8,000.-, payable within 14 days from the date of invoice with 2% discount or within 30 days cash without discount.  
For contractual values above EUR 8,000.-, payable as follows: 1/3 of contractual value on receipt of the confirmation of order, plus the appropriate proportion of VAT in accordance with the payment calculation, 1/3 of the contractual value at delivery or, if appropriate, notification of readiness for dispatch and invoice plus the remaining VAT according to the invoice, 1/3 of the contractual value 30 days after delivery or notification of readiness for dispatch, cash without deduction in all cases.
- b) If dispatch is delayed at the wish or responsibility of the customer, the supplier has the right to charge for appropriate storage costs. If the dispatch or the acceptance or the commissioning are delayed in some way by the customer, then payments which, other than in the payment deadlines covered here, are related to these dates or circumstances, are due in full at the latest 60 days after delivery or 60 days after notification of readiness for dispatch.
- c) If payment is delayed the supplier is entitled to charge interest at a level 3% more than the applicable discount rate of the Deutsche Bundesbank. The supplier retains the right to claim for damages exceeding this which arise from the delay.
- d) If circumstances are known which bring the customers creditworthiness into doubt at the time of completion of the contract, the supplier is entitled to demand either prepayment or securities appropriate to the fulfilment of the payment arising from the contract. If the customer does not fulfil this demand within an appropriate time limit which will be set, the supplier is entitled to withdraw in whole or in part from the contract.
- e) The customer is only entitled to make charges, to withhold payment or to a reduction in purchase price, even when formal complaints or claims are being made, if those claims are either legally enforceable or are not disputed.

#### 6. Supply and performance timetable

- a) The dates and time limits given by the supplier are not binding unless otherwise explicitly agreed or confirmed in writing. A binding delivery timetable begins with the date of the confirmation of order; if the execution of the order requires the customer to produce documentation, commissions or clarification and finalisation of all technical details, or if a payment is to be made at the confirmation of contract, the delivery deadline period begins in the first case with the fulfilment of all of these prerequisites by the customer or in the second case at the date of the suppliers receipt of payment.

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- b) The maintenance of bindingly agreed delivery timetables implies the punctual fulfilment of all contractual duties on the part of the customer, in particular the timely execution of agreed pre-payment or the timely execution of the customers duties. If after completion of the contract the customer desires alterations or extensions, the agreed delivery timetable shall be appropriately extended. The supplier has maintained the delivery timetable if, at the time when the delivery deadline has been reached, the goods to be supplied have either been dispatched or the customer has been notified of readiness for dispatch.
- c) Even when delivery deadlines and dates have been bindingly agreed, the supplier is not liable for disturbances to the supply and performance resulting from force majeure or resulting from events which make the supply and performance significantly difficult or impossible - this includes difficulties arising subsequently in obtaining materials, operational disturbances, strikes, lock-outs, staff shortages, shortages transport means, regulations made by authorities etc., including cases in which these occur at the supplier's own suppliers or their under-suppliers. They entitle the supplier to delay the supply or the performance for the period of the delay, with the addition of an appropriate start-up time, or to withdraw from the contract in regard to the whole or a part of the unfulfilled section.
- d) If the hindrance persists for more than three months, the customer is entitled, after having set an appropriate subsequent deadline, to withdraw from the contract in regard to the whole or a part of the unfulfilled section.
- e) The supplier is at any time entitled to make partial deliveries or to execute partial performances.

#### 7. Transfer of risk

Risk is transferred to the customer as soon as the goods are given to the person responsible for transport, or have left the supplier's stores for the purposes of dispatch. If dispatch is not possible without the supplier creating a liability, or if at the wish of the customer the dispatch is not performed or is delayed, the risk is transferred to the customer with the notification of readiness for dispatch.

#### 8. Assembly

- a) Assembly and fitting of the supplied goods is a duty of the customer.  
Warranty for the supplied goods requires that the fitting is performed in a workmanlike and proper manner, appropriate to the recognised technical rules and in accordance with the supplier's fitting instructions and information.
- b) If the supplier is in fact also to perform the assembly and fitting of the supplied goods, a special agreement is to be reached in this regard.

#### 9. Maintenance

The customer and operator are obliged to precisely observe the operating and maintenance instructions as well as the fitting and operational documentation and the functional descriptions supplied with the goods. If, exceptionally, the operating and maintenance instructions of the supplier are not with the operator, he must request these without delay from the supplier.

#### 10. Warranty and liability

- a) The supplier guarantees that the products are free from faults of manufacture or materials; the guarantee extends for six months. It begins with the date of delivery.
- b) All warranties become void if the operating or maintenance instructions of the supplier are not followed, if changes are made to the products, parts exchanged, or if consumable materials or connecting parts are used which do not accord with the original specification.
- c) The customer must inform the supplier of any faults in writing without delay, and at the latest within a week of delivery of the goods. The supplier is to be notified immediately after the discovery of any such faults as can not be discovered by a careful examination within this period of time, or which appear later.
- d) If the supplier's performances should have faults in the sense of warranty law, the supplier is liable as follows, all other claims being excluded:
1. Any parts which can be shown to be unusable, or whose usability is not insignificantly restricted as a result of circumstances present at the time of the transfer of risk, in particular as a result of faulty construction, faulty material, or faulty processing, will be rectified or replaced at the choice of the supplier.
  2. If the rectification is not successful within an appropriate period, the customer can at his option demand reduction in the remuneration or cancellation of the contract.
- e) The supplier offers no warranty for faults which result from the following reasons:
1. If, in contrast to the design of the plant expected by the supplier, the customer has an altered implementation carried out, or if the supplier was given information or values which were incorrect or incomplete for the planning or design of a plant or item of equipment.
  2. If other connections are planned or installed by the customer.
  3. If operational checks which are normal in practice and are required by the supplier are not properly executed.+
  4. If loading is excessive.
- f) Warranty claims against the supplier are only available to the immediate purchaser, and are not transferable.
- g) The foregoing paragraphs exclusively contain the warranty for the products, and exclude all claims of any other kind. This does not apply to claims for damages arising from assured properties which the purchaser should secure against the risk of the consequences of faults, nor to claims for damages based on improper intention or gross negligence on the part of the supplier.

#### 11. Retention of ownership

- The following securities are retained by the supplier for the fulfilment of all claims (including all outstanding account balances) which the supplier has now or in the future against the purchaser for whatever legal reason; they may on request at his option be released, as long as their value continues to exceed the claims by more than 20%.
- a) The goods remain the property of the supplier. Processing or alteration are always performed on behalf of the supplier as the manufacturer, without however creating liabilities for him. If the supplier's (joint) ownership ceases as a result of incorporation of the goods, then it is now hereby agreed, that a share of the value (the invoice value) of the customer's (joint) ownership in the new unit is assigned to the supplier. The customer shall hold the supplier's (joint) ownership without charge. Goods which are (jointly) owned by the supplier are referred to in the following as conditional goods.

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- b) The customer is entitled to process and to sell the provisional goods on in the course of proper business, as long as he is not in arrears. Attaching or transferring the goods as security is not permitted. The customer now transfers as security the full extent of all claims arising with regard to the conditional goods, from their further sale or from any other legal reason (insurance, unauthorised action), to the supplier (including all claims to an account balance). The supplier provisionally authorises him to collect in the customer's own name the claims transferred to the supplier and due for payment to him. This authorisation of collection can only be cancelled if the customer does not properly fulfil his payment duties. If third parties have gained access to the conditional goods, the customer will inform the third party regarding the supplier's ownership and will inform the supplier without delay.
- c) If the customer behaves in a way which conflicts with this contract - in particular if his payments fall into arrears - the supplier is entitled to take the provisional goods back, or in appropriate cases, to demand transfer of the customer's claims against third parties for return. If the goods are taken back or attached by the supplier this does not constitute a withdrawal from the contract, unless the law of instalment contracts is applicable.

#### **12. Applicable Law, place of fulfilment, place of jurisdiction, partial ineffectiveness**

- a) The law of the Federal Republic of Germany applies to these business conditions and to the entire legal relationship between supplier and customer.
- b) The place of fulfilment for all duties by both parties is - as long as legally permissible - Stuttgart.
- c) Provided if is legally permissible Stuttgart is agreed as the place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship.
- d) If one or more terms in these business conditions, or a term in the context of other agreements, is or becomes ineffective, the effectiveness of all other terms or agreements is not thereby changed.

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