

# General Terms and Conditions of Sale, Delivery and Payment



Müller-Elektronik GmbH<sup>1</sup>, Franz-Kleine-Strasse 18, 33154 Salzkotten, Germany  
(hereinafter referred to as "Müller-Elektronik")

## General

1. These Terms and Conditions of Sale, Delivery and Payment shall apply exclusively to the deliverables and services that we provide to entrepreneurs (*Unternehmer*), legal entities under public law (*juristischen Personen des öffentlichen Rechts*) and special funds under public law (*öffentlich rechtliche Sondervermögen*). All present and future legal relations between the ordering party, principal or buyer (hereinafter referred to as "Ordering Party") and Müller-Elektronik shall be governed by these Terms and Conditions of Sale, Delivery and Payment as amended from time to time. They shall also apply to all future deliverables, services or offers to the Ordering Party, even if they are not the subject of a separate agreement. Deviating terms and conditions of the Ordering Party are explicitly opposed. Terms and conditions of the Ordering Party shall not apply, even if Müller-Elektronik does not oppose their application in the individual case. Even if Müller-Elektronik refers to a letter that contains or refers to terms and conditions of the Ordering Party, such reference shall not be deemed agreement to the application of such terms and conditions.

2. Our Terms and Conditions of Sale shall apply solely to entrepreneurs (*Unternehmer*) as defined in Section 310 subsection 1 of the German Civil Code (BGB<sup>2</sup>).

## II. Offers

1. Our offers are non-binding and, like all agreements between the Ordering Party and Müller-Elektronik, must be made in writing. The documents forming part of the offers, such as images, drawings, indications of weight and dimensions, shall only be approximately decisive unless they are expressly designated binding. They are not guaranteed quality features, but descriptions or designations of the deliverable or services. Variations that are customary in the trade and variations resulting from legal provisions or that constitute technical improvements and the replacement of components by parts of equivalent value shall be permitted, provided that they do not impede fitness for the purpose intended in the contract. Müller-Elektronik reserves right of ownership and copyrights in cost estimates, drawings and other documents; they may not be made accessible to third parties. This shall also apply to such written documents designated as "confidential". The Ordering Party may not forward them to any third party without our explicit prior approval.

2. If the order qualifies as an offer as defined in Section 145 of the German Civil Code (BGB), then we may accept it within 2 weeks.

3. The purchase agreement concluded in writing, including these General Terms and Conditions of Delivery, shall be exclusively decisive for the legal relations between Müller-Elektronik and the Ordering Party. It completely reproduces all agreements made between the contracting parties regarding the scope of the contract. Oral promises given by Müller-Elektronik prior to the conclusion of this agreement shall be legally non-binding and oral agreements made by the contracting parties shall be replaced by the written agreement unless they expressly show in each case that they are to remain binding.

4. Supplements and modifications of the agreements made, including these General Terms and Conditions of Delivery, must be made in writing to be effective. With the exception of *Geschäftsführer*<sup>3</sup> or *Prokuristen*<sup>4</sup>, the employees of Müller-Elektronik are not entitled to conclude any oral agreements deviating herefrom. Submission by means of telecommunications, including but not limited to, by telefax or by email, shall suffice to comply with the written form, provided that the copy of the signed declaration is submitted.

## III. Order Confirmation, Object of the Delivery and Services

For date, type and scope of the deliverables and services as well as the price, the written confirmation of order from Müller-Elektronik – if provided – shall be decisive. For the rest, the provisions of Section II shall apply.

## IV. Prices and Terms of Payment

1. Unless agreed separately, prices are ex works and do not include loading, packaging, transport and any potential insurance; such items shall be invoiced separately. Prices are exclusive of value added tax in the statutory amount as amended from time to time. Prices are quoted in euros, for export delivery plus customs duties and fees and other public charges. If the delivery and performance period exceeds four months and the materials and wage costs rise after conclusion of the contract, Müller-Elektronik is entitled to charge reasonable surcharges based on its initial price calculation for incurred cost increases. For small orders, i.e. orders for goods with a value of less than 35.00 €, we charge a handling fee in the amount of 10.00 €.

2. The purchase price shall be due without deduction immediately upon the Ordering Party's receipt of the invoice, unless another term of payment is stated in the order confirmation. Payment shall only be deemed effected if we are able to freely dispose of the amount. In the case of payments by cheque, payment shall not be deemed made until the cheque is cashed. The statutory provisions on the consequences of default in payment shall apply. Handing over a cheque shall not be deemed payment.

3. Deduction of early payment discounts must be agreed in writing.

4. Müller-Elektronik is entitled to execute or render any outstanding deliveries or services only against advance payment or provision of a security, if after conclusion of the contract it becomes aware of circumstances that are liable to essentially impede the Ordering Party's creditworthiness and to endanger payment of outstanding claims of Müller-Elektronik against the Ordering Party arising from the relevant contractual relationship (including other individual contracts governed by the same master agreement). The Ordering Party shall only have the right to withhold payments or to set-off its debt with counter-claims insofar as its counter-claims are undisputed or have been determined by final court judgment.

5. In the event of default in payment, Müller-Elektronik will charge interest in the amount of 9 percentage points above the base rate. Müller-Elektronik reserves the right to claim for loss and damage in excess of that amount.

## V. Period of Delivery and Performance

1. The times and deadlines stated by Müller-Elektronik are forecasts. Delivery periods and dates shall only be binding if Müller-Elektronik has explicitly confirmed them as definite delivery periods and dates in writing. It is a precondition of Müller-Elektronik's compliance with such times and dates that all commercial and technical questions between the contracting parties have been clarified and the Ordering Party has performed all duties incumbent on it, such as paying the purchase price. If this is not the case, the delivery period shall be reasonably extended. This shall not apply if the delay is attributable to Müller-Elektronik.

2. The delivery and performance period (Delivery Time Limit) shall commence upon receipt of the order confirmation and shall be deemed adhered to if the object of the delivery and service has left the Müller-Elektronik's factory or their readiness for despatch has been notified by expiry of the time limit. If acceptance must be carried out for contractual or legal reasons, the time of acceptance, and alternatively, notification of readiness for acceptance, shall be decisive, except in the case of a justified rejection of acceptance.

3. The Delivery Time Limit shall be extended by a reasonable time in the case of measures taken due to industrial conflict, including strike and lockout as well as the occurrence of unforeseeable hindrances beyond the control of Müller-Elektronik, provided that such hindrances can be proven to have a material impact on the completion or delivery of the object of delivery and services. This shall also apply if the circumstance occurs at a tier 2 supplier's business. In important cases, Müller-Elektronik shall inform the Ordering Party of the commencement and end of such hindrances as soon as possible.

4. If shipment or acceptance of the object of delivery and services is delayed for reasons the Ordering Party is responsible for, the latter will be charged the costs incurred by the delay, starting one month after notification of readiness for shipment or acceptance as applicable; but no less than 5% per month of the amount of the invoice if the goods are stored in Müller-Elektronik's factory. The Ordering Party is entitled to prove that no loss has incurred due to the delay or that the loss is substantially lower than the lump sum.

5. Performance by the Ordering Party of its contractual obligations is a precondition for adherence to the Delivery Time Limit.

6. The Delivery Time Limit shall be reasonably extended if Müller-Elektronik has not been supplied in good time by a tier 2 supplier.

7. If the Ordering Party fails to accept the goods without justification, Müller-Elektronik is entitled to withdraw from the contract and to claim compensation in accordance with the legal requirements.

8. If Müller-Elektronik is in default with the delivery of a deliverable or the rendering of a service or if a delivery or a service becomes impossible regardless of the reason, Müller-Elektronik's liability to pay compensation shall be limited pursuant to Section IX of these General Terms and Conditions of Sales, Delivery and Payment.

## VI. Passing of the Risk, Acceptance, Transport

1. The risk shall pass to the Ordering Party no later than when the object of the delivery or service is placed at its disposal on Müller-Elektronik's business premises, even if partial performances have been rendered or Müller-Elektronik has taken on other services, such as the despatch costs or transport and installation. If the goods must be accepted, such acceptance shall be decisive for the passing of the risk. It must be carried out immediately as at the date of acceptance, or alternatively after Müller-Elektronik's notification of the readiness for acceptance of the work (*Werk*). The Ordering Party must not refuse acceptance due to the existence of a non-substantial defect. Upon the Ordering Party's wish, Müller-Elektronik shall insure the shipment against theft, breakage, transport damage, fire and water damage and any other insurable risks.

2. If despatch is delayed as a result of circumstances beyond Müller-Elektronik's control, the risk shall pass to the Ordering Party on the day of readiness for despatch; Müller-Elektronik shall however be obliged to have the insurances requested by the Ordering Party taken out at the Ordering Party's request and expense.

3. Delivered items must be received by the Ordering Party without prejudice to the rights stated in Section VIII even if they have non-substantial defects.

4. Partial deliveries shall be admissible to the extent that this may reasonably be expected of the Ordering Party.

5. The mode of shipment and the packaging are at the due discretion of Müller-Elektronik. Any transport aids that may be used are owned by Müller-Elektronik.

6. Müller-Elektronik must be notified of any transport damage immediately.

## VII. Reservation of Ownership

1. Müller-Elektronik reserves title to the object of delivery and services until all claims of Müller-Elektronik against the Ordering Party arising from the business relationship have been satisfied. If the Ordering Party acts in breach of contract, including but not limited to, by being in default of payment, Müller-Elektronik is entitled to withdraw from the contract and to recover the object of delivery and services and the Ordering Party is obliged to return them. Recovery and pledge of the deliverable by Müller-Elektronik shall only be deemed withdrawal from the contract if Müller-Elektronik explicitly declares such in writing.

2. Processing or transformation of goods subject to the reservation of title shall always be carried out by the Ordering Party on the behalf of Müller-Elektronik. If the item subject to reservation of title is processed or inseparably mixed with items not belonging to Müller-Elektronik, Müller-Elektronik shall acquire co-ownership in the new item in the proportion of the value of the item subject to reservation of title to the other processed or mixed items at the time of processing or mixing. If goods of Müller-Elektronik are consolidated with other movable items to a unified item or inseparably mixed and the other item must be regarded as the main item, it is hereby agreed that the Ordering Party shall transfer co-ownership proportionately, provided the main item belongs to the Ordering Party. The Ordering Party shall store the goods owned or co-owned by Müller-Elektronik. For the rest, for the item resulting from processing, transformation or transformation or consolidation or mixing, the same applies as for the goods subject to reservation.

3. Müller-Elektronik is entitled to insure the object of delivery and services against theft, breakage, fire, water damage and any other damage at the Ordering Party's expense, unless the Ordering Party itself has provably taken out such insurance.

4. Resale of the delivered goods, whether unprocessed or processed or consolidated or mixed, shall only be admissible for resellers in the ordinary course of business with reservation of title and only if the account receivable from the resale passes on to Müller-Elektronik. The Ordering Party is not permitted to effect pledges and secured transactions, nor to agree on a prohibition of assignment. If third parties attempt to encroach on rights of Müller-Elektronik, the Ordering Party must immediately inform Müller-Elektronik thereof.

5. The Ordering Party hereby assigns all receivables it is or will be entitled to from resale or any other legal ground involving the supplied goods in the amount of the value of the goods subject to reservation (invoiced amount) to Müller-Elektronik upon their creation. Müller-Elektronik hereby accepts the assignment.

6. The Ordering Party is authorized to collect the receivables arising from resale until revoked. Upon request, the Ordering Party must name to Müller-Elektronik the debtors of the assigned receivables, provide the information necessary to assert its claims against the debtors and hand over the documents, and inform the debtors of the assignment.

7. Müller-Elektronik undertakes to release the securities to the extent that their value exceeds the receivables to be secured by more than 20%, unless such receivables have already been settled.

#### VIII. Warranty / Liability for Defects

For material and legal defects of the deliverable or service which have been notified properly and in good time, Müller-Elektronik shall grant warranty to the exclusion of further claims subject to Section IX.:

1. All those deliverables or services turning out to be defective as result of circumstances existing prior to the passing of the risk must be subsequently improved or replaced at no charge by an item or service that is free of defect. Any detection of such defects must be reported to Müller-Elektronik immediately in writing. Replaced parts shall become the property of Müller-Elektronik.

2. The Ordering Party must grant the required time and opportunity, after consulting Müller-Elektronik to carry out all measures of subsequent improvement and of replacement deliveries considered by Müller-Elektronik to be necessary; otherwise, Müller-Elektronik shall be released from liability for the resulting consequences. Only in urgent cases of a threat to operating safety or to prevent disproportionately severe damage – in which case Müller-Elektronik must be informed thereof immediately – the Ordering Party shall have the right to remedy or have the defect remedied by third parties and to demand reimbursement for the necessary expenses from Müller-Elektronik.

3. Of the direct costs incurred for the subsequent improvement or replacement delivery performed by Müller-Elektronik, Müller-Elektronik shall bear the costs for the replacement including shipment, provided it transpires that the complaint is justified. Reasonable costs for disassembly and assembly shall be reimbursed according to the provisions of the law. This shall apply correspondingly to the cost of determining the cause of the defect.

4. For the rest, the claims of the Ordering Party against Müller-Elektronik as a whole or in respect of individual parts are limited to the right to cure (*Nacherfüllung*). Only if cure (*Nacherfüllung*) has failed, may the Ordering Party reduce payment or withdraw from the contract.

5. If only a marginal defect exists, the Ordering Party shall be entitled only to reduce the contractually agreed price.

6. Müller-Elektronik does not assume any warranty in, including but not limited to, the following cases: unsuitable or improper use, faulty assembly, putting into operation and/or use - including faulty assembly, putting into operation and/or use not compliant with the state of the art - by the Ordering Party or third parties, usual wear and tear of the goods, faulty or negligent handling, improper maintenance, unsuitable utilities, defective construction works, unsuitable building land, unless Müller-Elektronik is responsible for them.

7. If the Ordering Party/Principal or a third party cures (*nachbessern*) improperly, Müller-Elektronik will not be liable for the resulting consequences. This shall also apply to a modification of the object of delivery and services carried out without Müller-Elektronik's prior approval.

8. If the object of delivery or services infringes industrial property rights or copyrights within Germany, Müller-Elektronik will, as a rule, provide the Ordering Party with the right to continued use, or modify the object of delivery or services in a way the Ordering Party can be reasonably expected to accept such that the property rights are no longer infringed. If it is not possible to do so at economically reasonable conditions or within a reasonable time limit, the Ordering Party shall be entitled to withdraw from the contract. Under the conditions mentioned, Müller-Elektronik shall also have the right to withdraw from the contract. Furthermore, Müller-Elektronik will hold the Ordering Party harmless against claims by the relevant holders of property rights that are undisputed or res judicata.

9. Subject to Section IX, in the case of an infringement of property rights or copyrights, the obligations of Müller-Elektronik stated in Section VIII.8 are exhaustive.

They shall exist, only if

- the Ordering Party immediately informs Müller-Elektronik of infringements of property rights or copyright in respect of which a claim has been raised,
- the Ordering Party supports Müller-Elektronik in the defence of the asserted claims to a reasonable extent or enables Müller-Elektronik to execute the modification measures according to Section VIII.8,
- Müller-Elektronik reserves the right to all defensive actions including any out-of-court settlements,
- the defect is not based on an instruction of the Ordering Party and
- the infringement of right has not been caused by the fact that the Ordering Party high-handedly modified the deliverable or used them contrary to the contract.

10. No warranty is given in respect of the sale of second hand goods. However, if Müller-Elektronik has repaired devices in full or in part as agreed, the following prerequisite shall additionally apply to the warranty: The warranty shall cover only those parts the renovation or repair of which was incumbent on Müller-Elektronik by contract.

11. The limitation period for all warranty claims shall be 12 months starting with the passing of risk.

#### IX. Liability

1. The right of the Ordering Party to demand compensation due to claims under strict liability, shall be limited to cases

- a) of intent, gross negligence on the part of Müller-Elektronik, its legal representatives (*gesetzliche Vertreter*) or persons used to fulfil its obligations (*Erfüllungsgehilfen*),
- b) of negligent breach of fundamental obligations under the contract (cardinal obligations – *Kardinalpflichten*),
- c) of fraudulent concealment of defects
- d) of assumption of a guarantee, of culpable injury to life, body, or health by Müller-Elektronik, its legal representatives (*gesetzliche Vertreter*) or persons used to fulfil its obligations (*Erfüllungsgehilfen*), or
- e) of a defect of the object of delivery or services where liability for personal injury or property damage to privately used objects applies pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

2. In the event of a negligent breach of fundamental obligations under the contract (cardinal obligations – *Kardinalpflichten*), the claim shall be limited to the amount of the foreseeable damage that might typically occur under such a contract.

3. Further claims for damages shall be excluded.

4. To the extent claims for damages against Müller-Elektronik, its persons used to fulfil its obligations (*Erfüllungsgehilfen*) or vicarious agents (*Verrichtungsgehilfen*) exist, they shall become statute-barred within one year starting on the commencement of the limitation period provided by law.

5. If Müller-Elektronik or its staff gives advice and information or makes a recommendation prior to, during or after the conclusion of a contract or in any other context, Müller-Elektronik shall only be liable for it if Müller-Elektronik has agreed and received separate remuneration for this and the advice, information or recommendation has been given in writing. In this case, Müller-Elektronik shall, if it was its fault, only be liable up to 25% of the agreed remuneration for the advice etc. This limitation of liability shall not apply in the cases in items 1 a), b), d) and e).

6. Any rights the Ordering Party might have under the provisions on the sales of consumer goods (Sections 474 to 479 of the German Civil Code - BGB) shall remain unaffected by the clauses above. Accordingly, in particular, but not limited to, the right of the Ordering Party to recourse (*Rückgriff*) against Müller-Elektronik due to a defect of a thing sold to a consumer pursuant to Section 478 of the German Civil Code (BGB) remains unaffected.

#### X. Modification and Marking of Goods

1. Modification of the object of delivery or services requires Müller-Elektronik's prior written approval.

2. Any change in the markings of the object of delivery or services, including but not limited to the serial or other control numbers and any special stamping that are regarded as indicative of the origin of the Ordering Party or of third parties and might create the impression that it is a special product are inadmissible.

#### XI. Take Back / Return Shipments

Müller-Elektronik is not obliged to take back goods delivered without defects (exchange). It is left to Müller-Elektronik's discretion whether the goods are taken back or not. A return shipment will only be accepted if Müller-Elektronik has given its prior written approval. This shall not apply to incomplete articles that are no longer completely new (such as opened packaging). A handling fee in the amount of 15% of the net value of the goods, but no less than 10.00 euros, will be charged for return shipments that we are not responsible for. The goods must be delivered carriage paid. In any case, a copy of the invoice or the delivery note must be enclosed with the return shipment. Without this copy, it is not possible to handle the return shipment.

#### XII. Particularities in respect of Repair Orders out of Warranty

Müller-Elektronik will execute repairs or reconditioning of delivered goods/installation out of warranty only against reimbursement of the costs. The standard local remuneration will be charged.

#### XIII. Place of Performance, Place of Jurisdiction, Applicable Law, Data Protection, Miscellaneous

1. The place of performance for all transactions which concern Müller-Elektronik shall be Salzkotten, Germany.

2. The place of jurisdiction for all disputes with merchants (*Kaufleute*), legal entities under public law (*juristischen Personen des öffentlichen Rechts*) and special funds under public law (*öffentlich rechtliche Sondervermögen*) shall be Paderborn, Germany. However, Müller-Elektronik is also entitled to bring an action at the Ordering Party's head office.

3. The laws of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on the International Sale of Goods (CISG). This also applies to all contracts that are concluded in the course of the business relationship and do not contain any other legal arrangement in writing.

#### 4. Important note:

The data on the Ordering Party received in relation to the business relationship will be processed by us in accordance with the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) and other provisions of data protection law. The Ordering Party acknowledges that Müller-Elektronik will store data arising from this contractual relationship in accordance with Section 28 of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) for the purposes of data processing and that it reserves the right to transmit the data to third parties (such as insurance companies) to the extent necessary for contractual performance. Upon selection of the "buy on account" payment option, the Ordering Party authorizes us to forward the data on the Ordering Party to Schufa Holding AG<sup>i</sup>, Hagenauer Str. 44, 65203 Wiesbaden, Germany, InfoScore Consumer Data GmbH, Rheinstrasse 99, 76532 Baden-Baden, Germany, or to a supplier who sends the goods directly to the Ordering Party for the purpose of a creditworthiness check. We reserve the right to refuse the "Delivery on account" payment mode depending on the result of the creditworthiness check.

5. Subsidiary agreements, amendments and/or supplements must be made in writing. This also applies to a waiver of the requirement for the written form.

6. In the event that a provision of these Terms and Conditions or any other agreement within the scope of any other agreements is or becomes ineffective, the effectiveness of the remaining provisions shall not be affected. In lieu of the ineffective provision, such an effective provision shall be deemed agreed that corresponds as closely as possible to the provision intended by the parties. This shall also apply in the event of a gap.

<sup>i</sup> Translator's note: A GmbH is a limited company under German law as a general partner in the BGB-Bürgerliches Gesetzbuch

<sup>ii</sup> Translator's note: here: plural, no equivalent, similar to a director

<sup>iii</sup> Translator's note: here: plural, no equivalent, person holding power procurement

<sup>v</sup> Translator's note: Aktiengesellschaft, a joint stock corporation under German law