

**GENERAL TERMS AND CONDITIONS FOR SALES AND DELIVERY**  
**TBM TECHNISCH BUREAU H.A. MULLER B.V.**

**Article 1 General**

- 1.1 These general terms and conditions shall apply to all offers, quotations, orders placed, contracts (including repeat orders) of TBM Technisch Bureau H.A. Muller B.V. (hereinafter: "Muller") and the discharge thereof.
- 1.2 By "customer" shall be understood in these terms and conditions any person/legal entity who/that enters into negotiations and/or concludes contracts with Muller, also when several persons/legal entities are involved.
- 1.3 Unless in a specific case explicitly agreed otherwise in writing, Muller emphatically rejects application of customer's or other terms and conditions.
- 1.4 When Muller and customer agree explicitly in writing to the applicability of the general terms and conditions of customer, then this will leave, to the extent these general terms and conditions are not contradictory to the general terms and conditions of the customer, the applicability of the general terms and conditions of Muller intact.
- 1.5 Exceptions to these general terms and conditions shall be binding upon Muller only insofar as Muller has accepted these exceptions explicitly in writing. Should Muller and customer have agreed for any contract to an exception to these terms and conditions, then the customer can never appeal to this exception in the case of subsequent contracts. Exceptions to these general terms and conditions must in each case be agreed afresh explicitly and in writing.

**Article 2 Establishment of contract**

- 2.1 All offers and/or quotations are without engagement.
- 2.2 An order shall be established when an offer and/or a quotation issued by Muller is accepted in writing by customer. Muller shall be entitled to revoke its offer and/or quotation within a period of 7 days without engagement (even after customer has accepted it).
- 2.3 An order issued by customer shall be binding upon Muller only after Muller has acknowledged it in writing.
- 2.4 When the customer does not challenge in writing within 7 days of the dispatch of Muller's order acknowledgement its accuracy and completeness, then the order acknowledgement shall be deemed to reflect the contract accurately and completely.
- 2.5 For orders, deliveries and services for which neither a quotation nor an order acknowledgement has been dispatched, the invoice and/or delivery voucher shall be accepted as order acknowledgement and this invoice shall be deemed to reflect the contract accurately and completely.

**Article 3 Amendments to the contract**

- 3.1 Amendments to the contract, irrespective of their nature, shall only take effect when Muller and customer have agreed to them in writing.
- 3.2 When customer after establishment of the contract still requires changes to the execution thereof, Muller shall decide whether and if so under which (further) conditions these changes can be accepted in the context of the contract.
- 3.3 Muller shall be authorized in the event of amendments to the contract (irrespective of their nature) to charge the increased costs associated with these amendments to the customer.

**Article 4 Prices**

- 4.1 The offered and agreed prices shall be in Euros and excluding VAT, but excluding other taxes, levies and duties imposed by law and excluding packaging, loading, transport and insurance costs.
- 4.2 Should the contract stipulate that the price is to be paid in a currency other than the Euro, then the highest exchange rate on the date of acceptance of the quotation by customer or the date of acceptance of the order by Muller shall apply. Should equally the exchange rate on the date of payment differ more than 3% from the exchange rate on one of the aforesaid dates, then Muller shall be entitled to adjust its prices to the exchange rate of the payment date..
- 4.3 Should the price of raw materials, intermediates, (auxiliary) materials and parts etc. of the sold goods rise prior to delivery, then Muller shall be entitled to pass on the price increase to the customer.
- 4.4 Insofar as the price increase that Muller passes on to customer occurs within a period of three months after establishment of the contract, customer shall be entitled to dissolve the contract in writing within 14 days of written notification by Muller of that price increase. This shall not apply when import or export duties and/or other levies, taxes or duties due in connection with the goods, raw materials or intermediates sold are increased. In the event of said dissolution customer shall be obligated to reimburse Muller for costs already reasonably incurred in the transaction.
- 4.5 Muller shall be authorized, when it deems necessary or desirable, to engage third parties for proper execution of the contract. The costs incurred in connection with engagement of these third parties shall be for customer's account.

#### **Article 5 Payment**

- 5.1 Unless a different payment period has been agreed in writing, customer must pay the entire amount due by it, or in the event of payment in advance the remainder thereof cash (on delivery) or by deposit or transfer to a bank or giro account stipulated by Muller within 15 days of invoice date.
- 5.2 Muller shall be entitled at all times, even during execution of the contract, to require from customer that it pays in advance with respect to a contract/order.
- 5.3 Each payment made by customer shall be applied firstly to defraying (any) interest that it is due as meant in article 5.6 and also the costs incurred by Muller as meant in article 5.7 and shall thereafter be applied to reducing the oldest unpaid claim.
- 5.4 Customer shall not be entitled to reduce the purchase price by any amount or to set off the purchase price by any counterclaim that it may entertain against Muller.
- 5.5 When the customer remains in default with respect to any (part) delivery, Muller shall be entitled to suspend delivery of orders still to be discharged for the period during which customer leaves a (part) invoice due unpaid, and that notwithstanding the right of Muller to discontinue definitely after notice of default the deliveries and to require payment in full for all that it is then due and then without prejudice to Muller's entitlement to appropriate compensation for damages.
- 5.6 Should customer fail to pay any amount due by it within the period set for that, the customer shall be by process of law in default without necessity of further notice of default. The customer shall from the payment date of the invoice interest be due at the level of Euribor plus 3% to be calculated per (part of a) month over the amount still unpaid.
- 5.7 Any costs, both in and out of court, which Muller incurs in enforcing fulfilment of customer's obligations shall be for customer's account. The out-of-court costs for this shall be set at 15% of the invoice amount and then with a minimum of EUR 250.- without vouchers having to be submitted to support this. Aforesaid costs shall be due from the moment that the claim is entrusted to an attorney, bailiff or collection agency, irrespective of whether customer has been informed of this.
- 5.8 When customer consists of more than one person or legal entity they shall all be joint and severally liable for fulfilment of the obligations of customer.
- 5.9 All obligations of customer to Muller shall be due immediately in the event that the customer does not fulfil its payment obligations in good time, or when the customer has petitioned for moratorium of payment, has been declared bankrupt or has been subject to an attachment.

#### **Article 6 Delivery**

- 6.1 Muller has met its delivery obligation by offering to customer the goods at the agreed time and location.
- 6.2 Delivery times agreed or stipulated may never be interpreted as deadlines, unless explicitly agreed otherwise in writing. Exceeding the delivery period shall under no circumstances entitle the customer to compensation for any form of damage, direct or indirect, incurred by it or third parties, unless there has been gross negligence on the part of Muller.
- 6.3 Muller shall, when it is clear that it cannot meet its obligations with respect to delivery time, notify customer immediately, stipulating the period by which it is anticipated that the delivery period will be exceeded.
- 6.4 Unless at the time of ordering particular requirements have been stipulated in writing for the material and these have been explicitly accepted by Muller in writing, ordinary commercial quality shall be supplied.
- 6.5 When samples are demonstrated or issued these serve only to give an impression of the product to be supplied. These samples shall not be decisive for the composition and/or quality.

#### **Article 7 Transport and risk**

- 7.1 All goods, even those being transported under Muller's title, shall travel for customer's account and risk, even when the transporter has required that the clause appear on freight letters, transport addresses and the like that all transport damage is for account and risk of the party dispatching the shipment.
- 7.2 Muller shall, in the absence of any instructions from the customer to Muller, determine according to good commercial practice the manner of transport, shipment, packaging etc. without it being liable in any way for this. Any specific preferences on the part of the customer with regard to transport and/or shipment shall be implemented only when the customer has agreed to defray the additional costs associated with them.
- 7.3 All freight costs, import and export duties, station storage, monitoring and declaration costs, taxes and other levies shall be for the customer's account unless explicitly agreed otherwise.
- 7.4 Muller shall generally insure transport at customer's expense.

#### **Article 8 Return shipments**

- 8.1 Should the customer refuse to receive the goods sold or return them to Muller without having received Muller's written consent, Muller shall be entitled to store the refused or returned goods for account and risk of the

customer and to maintain them at the disposal of customer, without any acknowledgement of the justification of any complaint being derived from this.

- 8.2 Return shipments shall not relieve the customer in any way from fulfilment of its payment obligations.
- 8.3 Muller shall invoice to customer the true costs that arise from or are incurred in connection with or resulting from measures taken by Muller to deal with return shipments by issuing a specified account to customer.
- 8.4 Return shipments shall also be transported for account and risk of the customer.

#### **Article 9 Retention of title**

- 9.1 All goods supplied shall only remain the property of Muller until the moment at which all accounts receivable – for goods supplied or to be supplied pursuant to contract or pursuant to a contract for services rendered or to be rendered, and also for those deficient in fulfilment of such contracts – that Muller has with respect to the customer have been paid in full by the customer, even when security has been given for payment.
- 9.2 Notwithstanding that stipulated in article 5 with respect to payment, Muller shall, should customer remain in default with respect to any amount due, be entitled to recover all goods supplied to customer. Customer extends to Muller or to the representatives appointed by Muller permission to enter its corporate sites, depots, manufacturing halls, etc. for this purpose. The customer shall be invoiced for the costs associated with recovery. The goods shall in the event of recovery be credited for the amount that they transpire to have upon recovery.
- 9.3 The customer shall not encumber, process or alienate the goods supplied, other than in the normal practice of its operations. Should third parties attempt to establish or assert any rights to the goods supplied under retention of title, customer shall be obligated to notify Muller immediately in writing.
- 9.4 With regard to accounts receivable that do (or may) not fall under the retention of title, Muller retains the right to attach a tacit right of pledge on the goods sold and supplied. Customer stipulates in advance that it will collaborate in the establishment of a tacit right of pledge of this type for Muller.

#### **Article 10 Warranties**

- 10.1 Muller warrants that the goods it sells and supplies meet all the relevant legal provisions and safety requirements and that they are permitted on the Dutch market, or at any rate may be merchandized in the Netherlands.
- 10.2 Subject to the provisions hereunder Muller warrants the reliability and quality of the goods it supplies, to the extent that Muller at its discretion will repair free of charge or replace the goods in question with other reliable goods, when available, for which the customer demonstrates that the defects to them emerged within a period of one year or within that period that Muller has stipulated explicitly in writing as warranty period for that particular item.
- 10.3 The provision of paragraph 10.2 apply only insofar as the manufacturer, importer or supplier has given a warranty for the goods delivered by Muller and that this warranty to Muller is fulfilled.
- 10.4 The warranty shall not apply for goods that Muller has explicitly excluded from warranty nor for goods that consist of remnants or special parties, except when parties have agreed this specifically.

#### **Article 11 Complaints**

- 11.1 Complaints, irrespective of nature, shall not defer customer's payment obligation and may be brought to Muller's attention in writing only within the periods stipulated in this article.
- 11.2 Customer should on receipt of the goods check whether the goods correspond to order and/or instructions.
- 11.3 Muller must be notified in writing within one week after receipt of the goods of complaints in respect of visible defects or damage, including in all events omissions, improper layout, weights, numbers or packaging. Muller must be notified of hidden defects or damage within 14 days of when customer could reasonably have been expected to detect such defect. Complaints relating to invoices should be reported to Muller within 8 days of invoice date.
- 11.4 Customer shall not be entitled to return goods that it has complained about without Muller's written permission.
- 11.5 The customer must enable Muller to examine the goods that are the subject of the complaint in their original condition. When the complaint is justified Muller shall at its discretion either pay fair compensation for damages of at the most the invoice value of the goods supplied or replace the goods supplied free of charge, for return of the goods originally supplied or repair the delivered goods without charge.

#### **Article 12 Liability**

- 12.1 Apart from malice or gross negligence on the side of Muller or its legal representatives, will the liability of Muller be limited to maximally the invoice value of the delivered goods to which the well-grounded complaint(s) refer.

### **Article 13 Dissolution/termination**

- 13.1 Should the customer not fulfil, not fulfil in time or not fulfil properly its obligations pursuant to this contract, Muller shall be entitled without intervention of law and with immediate effect to dissolve this contract by means of written notice to the customer.
- 13.2 Should the customer be declared bankrupt, be awarded moratorium of payment, have its debts rescheduled by court order or lose due to attachment, tutelage or otherwise forfeit control of its assets or a part thereof, die, fail to pay an invoice or a portion thereof, fail to meet its obligations imposed by law or pursuant to this contract, proceed to alienate its business or part thereof, including the incorporation of its business in a new or already established business or change the object of its business, then Muller shall also be entitled to dissolve the contract without intervention of law and without necessity of notice of default.
- 13.3 Muller shall, notwithstanding the provisions of paragraphs 13.1 and 13.2, be entitled to compensation by customer for damages, expenses, interest, etc. that it incurs.

### **Article 14 Force Majeure**

- 14.1 The agreed delivery periods shall be extended by the period during which Muller or its suppliers is prevented by force majeure from fulfilling its obligations. Prevented shall be held to be equivalent: impeded to a serious extent.
- 14.2 Muller shall be deemed to be subject to force majeure when Muller after conclusion of the contract is prevented from fulfilling its contract obligation or from the preparation thereof as a result of war, war hazard, civil war, rioting, war risk, fire, water damage, flooding, strikes, plant occupation, lock-outs, restrictions to import and export, government measures, defects to machines, disturbances to the supply of power, whether at Muller's own facility or at third parties, from which Muller has to obtain the materials and raw materials in whole or part; as well as for storage and transport, whether or not under own supervision, and moreover for all other causes arising beyond the culpability or risk exposure of Muller.
- 14.3 When the period of force majeure has lasted 30 days or will certainly do so, both parties shall be entitled to dissolve the (residue of the) contract in writing. This shall not result in liability for damages on the part of either party.

### **Article 15 Licences**

- 15.1 Muller shall be entitled prior to proceeding with delivery to ascertain that the customer is entitled and qualified to acquire the goods (holds the permits required and the like). Muller shall be authorized to inspect customer's permits accordingly.
- 15.2 Should Muller believe that customer did not fulfil all the legal requirements or regulations, Muller shall be authorized to refuse the order or to dissolve the contracts already concluded without the customer being able to claim any compensation for damages in consequence thereof. Customer shall be obligated to remunerate Muller for costs already defrayed or damage otherwise incurred.

### **Article 16 Conversion**

- 16.1 Should a regulation in these general terms and conditions prove to be not legally valid, then the remaining regulations will undiminished stay in force. Instead of the possible invalid regulation(s) will then (a) regulation(s) become in force of which the contents is of similar purport as the invalid regulation.

### **Article 17 Applicable law**

- 17.1 The contract, the quotation and the ensuing legal relationship between Muller and customer shall be governed by Dutch law.
- 17.2 All disputes that ensue from this legal relationship and contracts arising from it shall be adjudicated by the qualified court in Arnhem or, at Muller's discretion, the qualified court in the town/city of customer.
- 17.3 The provision of the previous paragraph shall be without prejudice to parties deciding in joint consultation to have disputes settled by means of mediation or binding recommendation.

**General terms and conditions TBM Technisch Bureau H.A. Muller B.V. dated March 2008.**