



## Standard terms and conditions

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## **Section 1 General / scope of application**

**(1)** These standard terms and conditions apply to all current and future business transactions.

**(2)** Even if müller quadax is aware of conflicting, supplementary or differing standard terms and conditions of the customer, such terms will not form an integral part of the agreement, unless müller quadax has expressly agreed to their validity in writing.

**(3)** The standard terms and conditions of müller quadax shall apply, even if müller quadax is aware of conflicting or differing standard terms and conditions of the customer and delivers the order to the customer without reservation.

## **Section 2 Quotation / quotation documents**

**(1)** Quotations are non-binding and subject to change.

**(2)** müller quadax will be entitled to increase its prices by a reasonable amount if prior to the execution of the order commodity prices, wages, taxes or duties increase substantially and / or complications arise in connection with laws and/or other legally binding regulations, which would demonstrably have a material impact on the quotation costing of müller quadax. For the purposes of this provision, increases of at least 10% are considered substantial.

**(3)** müller quadax reserves the right to make reasonable changes to technical specifications and the shape, colour and/or weight of any product.

The compliance with technical specifications or other information / details included in catalogues, printed matter, bills of materials and / or drawings / sketches, etc. shall only be confirmed if the individual specifications, dimensions or details are expressly included in the technical description of the quotation. Where a general reference is made to documents or drawings, only the function will be deemed to have been confirmed.

**(4)** If an order qualifies as an offer within the meaning of Article 145 of the German Civil Code (BGB), the time limit for acceptance shall be one week. The receipt confirmation does not constitute a binding acceptance.

Acceptance can either be declared in writing, by providing the service and notifying the customer thereof or by delivering the goods to the customer.

**(5)** müller quadax shall be entitled to withdraw from the contract without prejudice to any other rights due to obvious errors in the quotation or the written order confirmation. This does not give rise to an entitlement of the customer to claim damages.

**(6)** The conclusion of an agreement is subject to the availability of supplies and timely delivery by müller quadax's suppliers in accordance with the terms of the contract. This applies only if the failure to deliver is not due to a fault on the part of müller quadax, in particular, if müller quadax concluded a congruent hedging transaction with its supplier.

At the same time, müller quadax shall inform the customer promptly if performance is unavailable. müller quadax shall promptly refund any counterperformance already received from the customer.

**(7)** müller quadax shall retain title and intellectual property rights to illustrations, drawings, cost calculations and any other documents, which may not be made accessible to third parties. In particular, this shall apply to written documents that are marked with the words "confidential". Disclosure to third parties shall require the express written consent of müller quadax.

These documents shall be returned free of charge to müller quadax as soon as they are no longer required. The customer will be held liable for any loss or damage. The customer shall hand over these items/documents at any time upon request. The customer is not entitled to exercise the right of retention in this regard. The items shall be stored safely and may not be reproduced without the prior written consent of müller quadax.

In case of items/documents covered by intellectual property rights in favour of müller quadax and / or protected by business / trade secrets, the customer may only use these items with the express permission of müller quadax, unless they have opened the items to certain types of third-party use.

### **Section 3 Scope of delivery**

**(1)** The customer shall include the individual specification of the contractual item in the order, based on the envisaged type of use, taking into account all technically relevant matters and considerations. If the customer does not provide the relevant details, or they are incomplete, the general product information of müller quadax will apply in a supplementary manner.

**(2)** The content and scope of delivery will be based on the written order confirmation from müller quadax. Where a contract is concluded by accepting time-limited quotation provided by müller quadax, the terms of the contract will be based on the content of the quotation. To be effective, side agreements and amendments will have to be confirmed in writing by müller quadax.

**(3)** Packaging shall become the customer's property. The customer shall arrange for disposal of packaging at its own expense according to the statutory provisions and releases müller quadax from duties pursuant to Sec. 4 German Packaging Ordinance and Sec. 15 German Packaging Law (duty to take back transport packaging). In all other respects, the provisions of the German Packaging Ordinance shall apply, or, from 01/01/2019 those of the German Packaging Law, as the case may be.

**(4)** müller quadax reserves the right to implement modifications of design or form during the delivery period in the interest of technological improvement or in response to requirements stipulated by law, provided that any such changes do not materially alter the contractual item and can be deemed acceptable to the customer.

#### **Section 4 Prices / payment terms**

**(1)** Unless agreed otherwise prices are quoted "ex works", including loading, but excluding packaging, transport and transport insurance and are exclusive of VAT at the applicable rate.

**(2)** The customer may not deduct a discount without a separate written agreement.

**(3)** Unless otherwise indicated in the order confirmation / quotation, invoices are due and payable in full within 30 days of the invoice date. If the customer is in payment arrears, müller quadax will be entitled to charge late-payment interest of 9% p.a. above the base rate of the European Central Bank. müller quadax will be entitled to assert higher damages, if it can prove that it suffered a higher damage as a result of the delay. The customer will in turn be entitled to prove a lower damage.

**(4)** The customer shall be entitled to offset or withhold payment only if his counterclaims are legally established, undisputed or acknowledged by müller quadax. The customer is only entitled to withhold payment insofar as his counterclaim is based on the same contractual relationship. müller quadax will be entitled to set-off payments against to the oldest outstanding claim, even in the case of conflicting repayment terms on the part of the customer.

**(5)** If the financial position of the customer were to deteriorate substantially after the conclusion of the contract or if müller quadax becomes aware of a previous deterioration in the customer's financial circumstances giving cause to serious doubts about the creditworthiness of the customer, müller quadax will be entitled, at its choice, to demand advance payment or the provision of collateral. müller quadax has the right to withdraw from the contract if the customer does not comply with this request.

**(6)** The prices are only valid for a delivery and performance within the Federal Republic of Germany.

## **Section 5 Call-off orders**

Call-off orders shall be accepted within the specified time periods or on the agreed dates.

## **Section 6 Delivery / delayed delivery / cancellation costs**

**(1)** The commencement of the delivery period specified by müller quadax is based on the clarification of all technical matters together with a timely and orderly performance of the obligations by the customer.

This includes, in particular, also any documents to be attained or prepared by the customer, such as drawings, descriptions, permits, approvals to be submitted by the customer and the credit of agreed advance payments on the account of müller quadax.

If any of these prerequisites have not been met or the customer has failed to clarify all the issues, the delivery time specified by müller quadax will be suspended until the impediment has been removed by the customer.

**(2)** The delivery period will be deemed to have been observed if the contractual item has left the plant by the end of the delivery date agreed or specified by müller quadax, but no later than by the end of the calendar week, which follows this date or in the case of an obligation to collect, the customer has been informed that the goods are ready for dispatch by the end of the calendar week specified in the order confirmation.

**(3)** The delivery period shall be extended accordingly if there are unforeseeable events not attributable to müller quadax and if such circumstances preventing delivery have a demonstrable effect on the production or delivery of the contractual item. This applies mutatis mutandis if these circumstances occur in the case of sub-contractors of müller quadax.

This shall particularly apply in the event of impediments and hindrances which occur as a result of labour disputes, especially strikes and lockouts.

Delivery delays arising from these circumstances will not be attributable to müller quadax even if they occur during an existing period of delay. müller quadax shall notify the customer as soon as possible of the commencement and end of any such impediments or hindrances.

**(4)** müller quadax will only be in default with a delivery if the customer has set a final deadline of two weeks in written form and müller quadax allows this final deadline to pass unsuccessfully.

**(5)** If the customer is in default of acceptance, or if he breaches any other duties to cooperate, we will be entitled to demand compensation for any damage incurred as a result, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased object will be transferred to the customer on the day he falls behind with acceptance.

**(6)** If delivery of the contractual item is delayed at the request of the customer, müller quadax will be entitled to charge the customer for the storage costs at one of the facilities of müller quadax incurred from the start of the month following the receipt of the dispatch notification at a minimum rate of 0.5% of the invoice amount for each commenced month.

While the customer is entitled to prove lower damage, müller quadax will have the right to prove higher damage.

In addition, müller quadax will be entitled to withdraw from the contract at the end of a reasonable period which has been notified to the customer or to dispose of the contractual item in another manner or to deliver the contractual item to the customer within an adequate, extended period in accordance with the terms of the agreement.

**(7)** If the customer unjustifiably withdraws from an order, müller quadax will, notwithstanding the option of demanding a higher level of damages, be entitled to demand 10% of the selling price for processing of the order and lost profit.

The customer will be entitled to prove that the actual damage incurred was lower.

**(8)** In case of a delayed delivery by müller quadax, claims for compensation for delay in performance will be excluded in the case of negligence. This does not prejudice other rights of the customer in this regard.

Furthermore, the customer is entitled to seek flat-rate compensation equal to 3% of the deliver value but not exceeding 15% of the delivery value. While the müller quadax is entitled to prove lower damage, the customer will have the right to prove a higher damage. In any case, claims for damages due to delays in delivery are limited to the foreseeable, typical damage.

Section 11 applies mutatis mutandis.

## **Section 7 Place of performance**

müller quadax hereby specifically advises the customer that the place of performance for every delivery, which is agreed "ex works", will be Forchtenberg, regardless which subsidiary of müller quadax makes the delivery.

## Section 8 Transfer of risk

(1) Unless otherwise stated in the contract documents, otherwise, delivery "ex works". Unless otherwise agreed in the contract documents, delivery is agreed "ex works".

(2) Delivery shall be deemed to have been made if the customer is in acceptance delay.

(3) The above provisions shall also apply to agreed partial deliveries.

(4) If müller quadax incurred costs for the despatch, delivery or assembly of the subject matter of the contract based on an appropriate contractual agreement, the aforesaid clauses on the transfer of risk will not be affected thereby.

(5) If despatch of the contractual item is delayed for reasons which are attributable to the customer, the risk will pass to the customer with effect from the date of readiness to deliver; müller quadax is, however, obliged to arrange an insurance at the request and expense of the customer.

(6) Notwithstanding the rights under Section 9, the customer shall accept delivered goods, even if they have immaterial defects.

Partial deliveries are permissible.

## Section 9 Guarantee

(1) The limitation period for claims for defects is 12 months - this does not apply in the case of malicious intent and as laid down in Section 11 (8). Any claims for damages, including those arising from a breach of the obligation to provide supplementary performance under paragraph 4, are subject to the provisions of Section 11.

(2) The warranty and liability of müller quadax shall be limited to supplementary performance either through repair or replacement, at the sole discretion of müller quadax. In the event that a defect is to be remedied, müller quadax shall bear the necessary expenses for the removal of the defective item and the installation of the remedied or defect-free item delivered insofar as these do not increase due to the object of the contract being located at a different place than the place of performance. Costs for any subsequent legally or commercially necessary improvements to the finished product made within the scope of a supplementary performance when connecting, combining, processing or making any other repair will not be replaced by müller quadax in proportion to which the product delivered relates to the sale price of the finished product. This also applies to subsequent improvements to finished products when no combining, connecting or processing with other products takes place beforehand or with products, which have been further processed or adapted.

If the use of the contractual item leads to the infringement of intellectual property rights in Germany, müller quadax shall acquire the right which will allow the customer to continue using

the contractual item or otherwise remedy the infringement.

If this were to be too expensive, or it could not be done within a reasonable time limit, the customer will be entitled to withdraw from the contract. müller quadax will also be entitled to withdraw from the contract under the aforementioned circumstances. This obligation is concluded for protection and copyright infringement subject to the provisions of Section 11 is final. This requires that the customer immediately informs müller quadax of any breaches and assists müller quadax in the defence of the asserted claims or makes the modification measures possible. The precondition is that müller quadax reserves all defensive measures, the defect of title is not based on an instruction made by the customer and the infringement of rights was not caused by the fact that the customer modified or utilised the contractual item in a manner that is contrary to the agreement. If müller quadax is not liable under this paragraph, the customer shall indemnify müller quadax against any third-party claims.

**(3)** If the supplementary performance fails, the customer shall have the right to withdraw from the contract. In the event of just a minor breach of contract, especially with respect to immaterial defects, the customer will not be entitled to withdraw from the contract. The right of the customer to a reduction in the purchase price is excluded.

The corrective action will be deemed to have failed after the second unsuccessful attempt, if given the nature of the contractual item, further attempts to remedy defect would be deemed adequate and reasonable under the circumstances.

**(4)** If the customer chooses to claim damages on account of a failed supplementary performance, the goods shall remain with the customer to the extent this is reasonable under the circumstances.

Compensation shall be limited to the difference between the purchase price and the value of the defective goods after the failed performance or if the service was provided by a third party, its performance price less the saved costs. This does not apply if müller quadax has caused the breach of contract with wilful intent. In the case of defect, which occurred through connecting, mixing or processing as well as in the further adaptation or processing of a defective product, müller quadax does not replace losses in the ratio in which the product delivered relates to the price of the finished product which could have otherwise been expected if the delivery of the finished product was free of defects.

**(5)** The product descriptions of müller quadax are only intended as specifications. Public comments, quality claims or advertising by the manufacturer shall constitute no contractual product descriptions.

The product descriptions of a manufacturer which are used by müller quadax are only intended as specifications. Public statements, recommendations or advertisements of the manufacturer do not constitute a contractual description of the goods.

**(6)** If the customer receives defective assembly instructions, müller quadax shall only be obliged to deliver defect-free assembly instructions and this only if the defect in the assembly instructions was in conflict with the orderly and proper assembly.



(7) The customer shall only be entitled to enforce compensation claims on account of non-performance or to withdraw from the contract if müller quadax fails to rectify the defect despite a period of grace having been set, or fails to make a replacement delivery or if the customer cannot be reasonably expected to accept a replacement delivery or rectification.

(8) Warranty claims under paragraphs 1-7 require the customer to notify müller quadax of apparent defects in written form within 2 weeks of receipt of the goods, and in the case of hidden defects within 2 weeks of identifying the relevant defect.

(9) The customer bears the burden of proof for the prompt notification of a defect. The customer is also responsible for proving that he did not personally take any measures to correct the defect.

(10) Guarantees in the legal sense are not given to the customer by müller quadax. Production guarantees of third parties shall remain unaffected hereby.

### **Section 10 Warranty for replacement of individual parts**

If a single part of a product is exchanged/replaced within the warranty periods this does not involve any extension / new start of warranty periods for the whole product. Instead, the extension / the new start of the warranty periods refer exclusively to the replaced single part

### **Section 11 Limitation of liability**

(1) In the case of a negligent breach of duty, the liability of müller quadax will be limited to contractually foreseeable, direct average damage, typical for this type of goods. This will also apply to negligent breaches of duty by employees, workers, contractors, representatives and vicarious agents

Liability is excluded in the event of a slightly negligent breach of immaterial contractual obligations.

(2) Unless otherwise specified hereinafter, any further claims by the customer - for whatever legal reason - are excluded.

In particular, müller quadax does not accept liability for damage other than to the supplied goods, nor for loss of profit or other financial losses incurred by the customer. This also applies to objects, which have been created through connecting, combining, processing and/or further handling and processing.

**(3)** The exclusion and limitation of liability under paragraphs (1) and (2) above, does not apply to damage suffered as a result of loss of life or injury due to intentional or grossly negligent acts. The exclusion of liability also does not apply if müller quadax breaches one of its material contractual obligations; in this case, however, the liability is limited in accordance with paragraph (1) to contractually foreseeable, direct average damage.

Material contractual obligations refer to obligations, the fulfilment of which enables the proper performance of the contract and the fulfilment of which the customer may routinely rely upon.

**(4)** If müller quadax breaches a material contractual obligation, its compensation obligation for property damage shall be limited to the amount of damage covered by müller quadax's business liability insurance, unless the damage is due to gross negligence. müller quadax shall provide the customer with a copy of the insurance policy upon request.

If müller quadax has excluded or limited its liability, this shall also extend to the personal liability of its employees, workers, contractors, representatives and vicarious agents.

**(5)** In general, the liability of müller quadax shall be excluded in the event that other parts than those manufactured or specified by müller quadax have been installed in the contractual item at the customer's request. The customer shall bear the burden of proof that the defect of the contractual item has not been caused by the aforementioned non-conformity.

**(6)** müller quadax will not be held liable for installation work carried out by the customer himself. The burden of proof with respect to a defect-free installation lies with the customer. müller quadax's duty to reimburse necessary expenses pursuant to Sec. 7 par. 2 for the removal of the defective item and the installation of the remedied or defect-free item delivered shall thereby remain unaffected.

**(7)** The foregoing limitations of liability do not apply to customer claims that arise from guarantees and/or under the Product Liability Act.

**(8)** Claims for damages under paragraphs 1 - 7 above are subject to statutory periods of limitation.

## Section 12 Retention of title

**(1)** müller quadax will retain title to the contractual items until all the payments arising from the ongoing business relationship with the customer have been received in full.

If the customer is in a breach of contract, in particular, by falling into arrears with payments, müller quadax will be entitled to recover the contractual items. Recovering the contractual item shall not constitute a withdrawal from the contract unless müller quadax expressly declares this in writing.

The recovery of goods by müller quadax shall always constitute withdrawal from the contract. müller quadax is entitled to dispose of the recovered contractual items. The sale proceeds will be offset against the liabilities of the customer after the deduction of reasonable disposal costs.

**(2)** The customer shall treat the goods with due care. In particular, the customer shall take out an adequate new-for-old insurance covering these goods against damage caused by fire, water or theft. If maintenance and inspection works are required, the customer shall carry these out routinely at his own expense and in a timely manner.

**(3)** In the case of seizure of goods or any other third-party interventions the customer shall notify müller quadax promptly in writing. If the third party is not in the position to reimburse müller quadax for the judicial and extrajudicial costs of a legal action pursuant to Section 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable for the loss suffered by müller quadax.

Furthermore, the customer shall also notify müller quadax immediately of the destruction of or any damage to the goods. The same applies to any change in the ownership of the goods as well as the relocation of the registered office of the customer.

**(4)** The customer is entitled to sell the goods in the ordinary course of business. In this case, the customer hereby assigns any claims arising from the sale of the goods against his customers or third parties up to the value of the reserved goods (including VAT), irrespective of whether the goods have been resold after having been processed or not. müller quadax hereby accepts this assignment.

The customer remains entitled to collect receivables after the assignment. This is without prejudice to the right of müller quadax to collect the receivables in its own right. müller quadax undertakes, however, not to collect any receivables as long as the customer fulfils its payment obligations arising from the proceeds received, has not fallen into payment arrears and in particular, no petition has been filed to commence insolvency proceedings or cessation of payment. If this is the case, however, müller quadax will be entitled to demand that the customer notifies müller quadax of the assignment of claims and their debtors and in addition, provides all the information necessary for the debt collection, hands over all related documents and informs the debtors (third parties) of the assignment.

**(5)** The processing or treatment of the goods carried out by the customer shall always be performed in the name and on behalf of müller quadax. If the goods are processed with other goods not owned by müller quadax, müller quadax will acquire joint ownership of the new goods in proportion of the value of the goods to the other processed goods at the time of processing.

In all other respects, the same provisions shall apply to items produced as a result of processing as to goods delivered under the reservation of title.

**(6)** If the goods are inseparably mixed with other goods not owned by müller quadax, müller quadax shall acquire joint ownership of the new goods in proportion of the value of the goods to the other inseparably mixed goods at the time of mixing.

If the mixing is carried out in such a way that the customer's item can be regarded as the main item, it is hereby agreed that the customer will transfer the proportionate joint ownership to müller quadax. The customer shall preserve sole or joint ownership for müller quadax.

**(7)** In order to secure the claims müller quadax may have against the customer, the customer shall assign to müller quadax claims against third parties that may arise from the combination of the goods with a plot of land.

**(8)** müller quadax undertakes to release the collateral provided by the customer at the customer's request if the realisable value of the security exceeds the claims to be secured by more than 20 %. The collateral to be released will be selected at the choice of müller quadax.

### **Section 13 For-cause termination / embargo regulations / EU anti-terror regulations**

**(1)** If the delivery obligations of müller quadax or the payment obligations of the customer arising from contracts between müller quadax and the customer violate nationally or internationally binding provisions (e.g. foreign trade regulations of the Federal Republic of Germany, export and embargo regulations of the European Union and other states, in particular the USA, including EU anti-terror legislation), müller quadax will be entitled to terminate the agreement for cause and/or withdraw from the agreement.

**(2)** In these cases, the customer will not be entitled to claim damages.

**(3)** The customer undertakes to remain abreast of relevant statutory regulations that would render the performance of the contract for müller quadax impossible.

### **Section 14 Confidentiality**

The customer shall keep all information, know-how and other business and operational secrets relating to the execution of the respective order strictly confidential and not to disclose any information, documents or other records to third parties without the express consent of müller quadax. müller quadax shall also exercise the greatest discretion with regard to the customer's documents.

### **Section 15 Final provisions**

**(1)** The law of the Federal Republic of Germany shall apply. to the exclusion of the UN Convention on the Sale of Goods (CISG).

**(2)** Where the customer is a business, a public legal entity or a public-law special fund, the sole place of jurisdiction for any disputes arising from this agreement is the registered office of müller quadax. The same applies if the customer's general place of jurisdiction is not in Germany or if the domicile or habitual residence is unknown at the time of institution of legal proceedings.

müller quadax is entitled to bring an action before a court at the location of the registered office of the customer.

**(3)** If any provision of this agreement with the customer, including these standard terms and conditions is or becomes invalid whether in whole or in part, the validity of the remaining provisions of this agreement will not be affected or impaired thereby.

The parties shall replace the wholly or partially invalid provision by a provision that comes as close as possible to the economic purpose of the invalid provision.

### **Section 16 Confidentiality**

The customer shall keep all information, know-how and other business and operational secrets relating to the execution of the respective order strictly confidential and shall not disclose any information, documents or other records to third parties without the express consent of müller quadax. müller quadax shall keep the customer's documents confidential in like manner.