

General Terms and Conditions of Business (TC) of Miller Anlagen GmbH, valid from July 15, 2022

§1 Scope of Application

(1) These Terms and Conditions of Business of Miller Anlagen GmbH (hereinafter the "Seller") shall apply to all and any Purchase Contracts concluded between an entrepreneur (hereinafter "the Client") and the Seller, irrespective of the channel of communication used. These TC may be supplemented by written individual agreements. Any order potentially placed by any consumer is hereby objected to and rejected in advance.

(2) A consumer within the meaning of these TC shall be any natural person who enters into a legal transaction for any purpose outside his trade, business or profession. An entrepreneur within the meaning of these TC shall be any natural or legal person or partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

(3) The application of the Client's own terms and conditions of business is hereby objected to, save where a separate written agreement to that effect has been made. The Seller's silence shall not be construed as consent. Any deliveries made or services provided by the Seller shall be made and provided exclusively on the basis of these Terms and Conditions. Said TC may be supplemented by the supplier's or manufacturer's written conditions pertaining to the respective product or service. The provisions of the manufacturer's license relating to the software products shall form part of the Seller's conditions on the transfer of the products. The Seller expressly objects to any of the Client's conditions that deviate from these TC as well as from the manufacturer's product and service specific conditions.

§2 Conclusion of the Contract

(1) The Seller's product promotions shall not constitute a legally binding offer of contract; they are only a non-binding invitation to the Client to order products. The technical data stated in the respective product description shall only become part of the Contract once the purchase has been confirmed.

(2) By ordering the desired products, the Client makes an offer to enter into a Purchase Contract, which offer shall be binding for the Client. The Client shall be bound by said offer for a period of one week, such period to commence upon receipt of the offer by the Seller. The Seller may only accept this offer during such one-week period.

(3) Said offer shall be accepted in writing or electronically within one week by

Miller Anlagen GmbH
Louisenstraße 145
D-61348 Bad Homburg
Local Court (Amtsgericht) of Bad Homburg HRB 2202

When said period has expired without result, the offer shall be deemed rejected.

§3 Prices/Retention of Title/Payment/Dunning Charges

(1) The prices stated are subject to alteration and non-binding and may be changed at any time. Items are subject to prior sale and technical modifications. The prices stated by the Seller are net prices not including statutory value added tax.

(2) Any items delivered shall remain the Seller's property until all and any claims the Seller has against the Client under the relevant Purchase Contract have been fulfilled.

(3) All and any claims under the Contract that has been entered into shall fall due upon invoicing save where agreed otherwise. Where advance payment has been agreed, payment shall be due immediately following the conclusion of the Contract.

(4) Where the Client is in default of payment, the Seller shall be entitled to charge dunning fees.

(5) The Client shall have no right of set-off or retention other than where its counterclaim has been recognized by declaratory judgment, has been acknowledged by the Seller, or is undisputed.

§4 Delivery/Default in Acceptance/Export

(1) The Seller expressly reserves the right to make partial deliveries or deliver part performance, and to invoice such deliveries and services, if this is reasonable for the Client, taking into account the Seller's interests.

(2) Where the Client has been in default of acceptance for more than 7 business days, the Seller may grant the Client a grace period of 7 business days.

(3) Where acceptance has not been performed within such grace period, the Seller may demand damages, of 10% of the purchase price save where the Seller or the Client shall furnish proof that a greater or lesser damage, or no damage, has occurred.

(4) In the event of any default in acceptance by the Client, the Seller may demand compensation for any additional expenses incurred for any unsuccessful delivery notification as well as for the storage and preservation of the items to be delivered.

(5) In the event of any deliveries to countries outside Germany, additional costs may be incurred in individual cases, for which costs the Seller shall not be responsible and which shall be borne by the Client. Such costs shall in particular be costs for the transfer of payments by financial institutions (e.g. remittance fees, foreign exchange fees) or import duties and taxes (e.g. tariffs).

(6) The export of the products may be subject to national or foreign export control regulations. The Client undertakes to comply with all and any applicable import and export control regulations and is obliged to cooperate should the occasion arise.

§5 Passing of Risk

(1) The products shall be shipped to the delivery address stated by the Client.

(2) Save where otherwise stated, all products are ready for shipping immediately.

(3) The risk shall pass to the Client upon handover of the products to the carrier.

(4) Where shipping shall be delayed due to any circumstances for which the Client is responsible, the risk shall pass to the Client on the day the products are ready for shipping.

§6 Defects

(1) The Seller confirms that the products are functional ex warehouse. Save where otherwise stated, the Seller will sell only used items in the condition specified. Such items shall be sold excluding any liability for warranty of title or warranty of quality.

(2) Generally, regarding these used products, the following repurchase guaranty shall apply: where any defects occur with regard to the hardware components, when properly operated, within a period of one year from delivery, then the Seller declares that it shall, at its option, remedy the defect, deliver a comparable product that is free from defects, or repurchase the product. For this purpose, however, the defect must be notified to the Seller within 7 days from its occurring.

(3) The Client undertakes to examine the goods within 7 days from acceptance to check for any hidden defects and to notify such defects immediately.

Where the Client accepts any goods in spite of any obvious defects existing, then the Client shall only be entitled to claims for defects with respect to this particular defect where it has reserved in writing its rights concerning such defect when accepting the item delivered.

(4) The provisions under § 6 sub-section 3 above shall not apply where the Seller has fraudulently concealed the defect or has given a guaranty for the quality of the product.

§7 Manufacturer's Warranty

Any warranty given by a third party shall bind only such party as has given such warranty. The Seller shall not be bound thereunder in any manner whatsoever. The description of any products or services offered and/or provided by the original supplier in the supplier's own or any others' brochures, catalogues, websites or similar documents shall not constitute a warranty.

§8 Exclusion of Liability

(1) Where the Seller is liable for any damage suffered by the Client due to the Seller's fault or the fault of its legal representatives or vicarious agents, the Seller's liability shall be restricted to cases of intent or gross negligence. In the event of any harm to life, physical injury or harm to health as well as any breach of material contractual obligations, the Seller shall also be liable for ordinary negligence. In this context, material contractual obligations shall be such obligations the performance of which alone will make possible the proper implementation of the Contract and which the Client commonly trusts or may trust the Seller to comply with or the ones precisely which the Seller is obliged to grant to the Client under the Contract. In the event of any breach of material contractual obligations, the extent of the liability shall be restricted to the damage foreseeable at the time the Purchase Contract is concluded. Liability under the German Product Liability Act (*Produkthaftungsgesetz*) shall not be affected. The Seller's liability shall not be excluded or limited where it has fraudulently concealed a defect or has given a guaranty for the quality of the product.

(2) The Seller shall not be liable for any imponderables relating to the Internet nor for the availability of its Internet presence. The Seller shall in particular not be liable for any damage occurring due to the fact that an offer is not received by the Seller, or is received belatedly.

§9 Data Reconstruction

With regard to any data carriers that have already been in use and that are covered by this Contract, the Client and any persons that may gain access to such data carriers through the Client shall be prohibited from reconstructing, or attempting to reconstruct, any data that have been deleted prior to the conclusion of the Contract. The latter group of persons shall be bound in the same manner by the Client.

§10 General Provisions

(1) The language of the Contract shall be German. The valid German version of the TC shall be decisive for the interpretation thereof.

(2) The place of jurisdiction shall be Frankfurt am Main.

(3) The legal relationship between the Parties hereto shall be governed exclusively by German law, excluding conflict of law provisions and the UN sales convention (CISG).

(4) The place of performance shall be Bad Homburg vor der Höhe.