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## Junkers & Müllers GmbH | General Terms and Conditions of Sale (GTCS)

Version: August 2020

### 1. General | Scope

- 1.1 Unless otherwise agreed in writing in an individual case, these general terms and conditions of sale (hereinafter: **GTCS**), in the version in force at the time the relevant contract is concluded, shall be incorporated in all contracts of sale and supply contracts between Junkers & Müllers GmbH (hereinafter: **JM**) and its contractual partners (hereinafter: **Customers**).
- 1.2 These GTCS, in the version in force at the relevant time, shall also apply to future contracts between JM and the same Customer, without JM having to refer to them in each individual case. At the latest, they shall be deemed to be confirmed by the Customer when JM performs its services.
- 1.3 These GTCS shall apply to the exclusion of all others. Any general terms and conditions of the Customer which deviate from, conflict with or supplement these GTCS will only be incorporated in the contract if JM has given its written consent to their application.
- 1.4 Where in these GTCS the terms 'in writing' or 'written form' or grammatical variants of these terms are used in principle this means 'in writing' within the meaning of § 126 of the Bürgerliches Gesetzbuch (German Civil Code, BGB). The electronic exchange of copies of documents which have been signed by hand is sufficient for this purpose. Simple emails are not sufficient.
- 1.5 Unless expressly provided otherwise in these GTCS, legally relevant declarations made by the Customer and notices given by the Customer, which are made or given to JM after the conclusion of the contract (e.g. setting time-limits, reminders, declaration of withdrawal) must be made at least in text form in order to be valid (a simple email is sufficient).

### 2. Conclusion of the Contract

- 2.1 JM's quotations are subject to change without notice and non-binding. This also applies when JM has given the Customer catalogues, technical documentation (e.g. drawings, plans and calculations), other product descriptions or documents. JM retains the ownership of and copyright in such items.
- 2.2 When the Customer orders the goods, this is deemed to be a binding offer to enter into a contract. Unless stated otherwise in the order, JM shall be entitled to accept the Customer's offer to enter into a contract within 30 days of JM receiving it.
- 2.3 A contract of sale between JM and the Customer shall only come into existence by means of JM's order confirmation, identified as such, and made in writing or sent by email or by delivery of the goods.

### 3. Availability of Goods | Delivery Periods| Delay in Delivery

- 3.1 Only the units of goods listed in JM's price lists which are valid at the relevant time are available for delivery. JM reserves the right for there to be minor deviations from the information provided on dimensions, weight, characteristics and quality.
- 3.2 JM normally informs the Customer about the anticipated delivery period in the order confirmation. If goods are not available at the time of the Customer's order, then JM will inform the Customer of this once it is established that the goods are not available.
- 3.3 Delivery periods are not binding unless JM has expressly acknowledged them to be binding in writing.
- 3.4 If JM does not comply with a binding delivery period, the Customer is only able to withdraw from the contract or to claim damages instead of the performance of the contract after they have set a reasonable additional period of time for performance and this has expired without JM completing the delivery. This shall not apply if under the statutory provisions it is possible to dispense with setting an additional period of time for performance.
- 3.5 Whether a delay in delivery by JM has arisen shall be determined in accordance with the statutory provisions. Notwithstanding this, however, in each case a reminder from the Customer is necessary.

- 3.6 Force majeure, interruptions to business operations, industrial action and other impediments which are not the responsibility of JM which affect JM or JM's suppliers, shall release JM from the obligation to deliver for the duration of the interruption and of the period affected as a consequence of the interruption.

#### **4. Delivery in Instalments | Volume Tolerance | Passing of Risk | Default of Acceptance**

- 4.1 JM shall be entitled to make deliveries in instalments if (i) the goods delivered in instalments can be used by the Customer for the purposes of the intended use under the terms of the contract, (ii) the delivery of the remaining goods ordered is ensured and (iii) except where JM declares that it is prepared to assume such costs, this does not cause the Customer any significant additional work/expenditure or additional costs. JM may issue separate invoices for separate instalments of deliveries.
- 4.2 For technical reasons, the quantity of the goods delivered by JM may differ by up to 10% from the agreed quantity. Any quantity deviations within this technical tolerance shall constitute contractual performance by JM, and Clause 7 shall not apply to that extent. In such cases, the purchase price shall (also) be based on the quantity actually delivered.
- 4.3 Unless agreed otherwise in writing, the delivery of the goods shall be made 'FCA 41239 Mönchengladbach, Germany' as per Incoterms 2020 from JM in Germany (currently Bolksbuscher Straße 27 in D-41239 Mönchengladbach). The risk of accidental loss or the accidental deterioration of the goods shall pass to the Customer as soon as JM has made the goods available at the above location.
- 4.4 If it is agreed that the goods will be shipped, the Customer shall bear the shipping costs. In the event of express deliveries, express surcharges may apply. If the goods are shipped, the risk of the accidental loss or the accidental deterioration of the goods shall pass to the Customer as soon as JM hands over the goods to the carrier or other person appointed to carry out the shipment. In principle, JM dispatches the goods on an uninsured basis. Insurance of the goods against loss or damage during transportation shall only be taken out at the request of the Customer and with a corresponding special written agreement. The Customer bears the costs of the insurance.
- 4.5 If the Customer is in default of acceptance, fails to cooperate, or delivery by JM is delayed by other reasons for which the Customer is responsible, JM shall be entitled to demand reimbursement for the losses arising from this including additional expenses (e.g. storage costs). In such circumstances, starting at the time for delivery or – in the absence of a time for delivery – at the time of notification that the goods are ready for collection, JM shall charge a flat-rate of compensation in the sum of 0.5% of the net invoice sum for the relevant order per calendar week, but not exceeding a total of 20% of the net invoice sum for the relevant order. JM's right to provide evidence of higher losses and JM's statutory claims (in particular reimbursement of additional expenses, reasonable compensation, withdrawal) shall remain unaffected; however, the flat-rate compensation shall be set off against JM's more extensive monetary claims. The Customer shall be permitted to prove that JM did not suffer any losses at all or only suffered significantly less losses than the above flat-rate amount.

#### **5. Prices | Payment Terms**

- 5.1 Prices are given 'FCA 41239 Mönchengladbach, Germany' as per Incoterms 2020 or, if expressly stated in the order confirmation, inclusive of packaging costs. Value-added tax at the rate applicable on the day of invoicing will be shown additionally on the invoice.
- 5.2 If the Customer resides in an EU member state other than Germany, and if the turnover from a delivery is therefore exempt from VAT under German VAT law, the Customer shall be obliged to issue and provide JM with proof of delivery as required under German VAT law (e.g. confirmation of receipt of goods) upon request, and to cooperate in the preparation of other documents required in this context. Any such proof of delivery must contain at least the following information: (i) name and address of the Customer, (ii) quantity of the delivery and the customary trade description including the vehicle identification number in the case of vehicles, (iii) place and date of receipt of the delivery in other EU member states or, in the case of self-transport, the place and date of receipt of the delivery by the Customer, (iv) date of issue of proof of delivery, and (v) signature of the Customer or the Customer's authorized representative. The Customer shall be obliged to reimburse JM for all costs incurred by JM due to the lack of the aforementioned proof of delivery, as well as in the event of lack of cooperation by the Customer, including but not limited to VAT back tax.

5.3 If, within 30 days of concluding the contract, JM increases or reduces the price for the goods ordered, JM shall notify the Customer of this in writing or by email. The price notified in this way shall be deemed to be agreed by JM and the Customer. If the price changes by more than 5%, the Customer shall be entitled to withdraw from the contract.

5.4 Invoices issued by JM are due and payable by the Customer within 30 days of the invoice date. On the expiry of this period, the Customer shall be in default. During the period of default, the purchase price shall bear interest at a rate of 9 percentage points above the base rate applicable at that time. JM reserves the right to claim more extensive damages due to the default.

## 6. Retention of Title

6.1 JM retains the title to the goods delivered by JM (hereinafter: **Goods Subject to the Retention of Title**) until the Customer has settled all existing and future debts arising from its business relationship with JM.

6.2 The Goods Subject to the Retention of Title may neither be pledged by the Customer nor transferred by way of security. The Customer is only authorized to sell or process the Goods Subject to the Retention of Title in the ordinary course of its business activities.

6.3 Where the statutory requirements are met, JM is entitled to withdraw from the contract and demand the return of the Goods Subject to the Retention of Title.

6.4 In order to secure all of JM's existing and future claims arising from the business relationship between the Customer and JM, the Customer hereby assigns to JM with priority their claims arising from the resale of the of the Goods Subject to the Retention of Title or, as the case may be, their claims in respect of the goods attributable to any co-ownership interest of JM up to the amount of the invoice issued by JM. JM accepts the assignment. Unless the payer expressly gives instructions to the contrary, the Customer shall apply payments received from third parties from the sale of Goods Subject to the Retention of Title first of all to the part of the total claim not assigned to JM.

6.5 In so far as a retention of title exists in favor of JM or the Customer's claims have been assigned to JM, the Customer shall be obliged to provide JM with the information necessary to safeguard JM's rights. This applies in particular to attachments or other interventions by third parties in relation to JM's goods or to claims assigned to JM. The costs of any legal action taken by JM shall be borne by the Customer.

6.6 In addition to JM, the Customer is authorized to enforce the claims assigned to JM. JM will not enforce the claims provided that the Customer complies with its contractual obligations to JM, there is no defect in the Customer's capacity to perform and JM's retention of title is not enforced by means of exercising a right under Clause 6.3. However, if these conditions are met, JM may demand that the Customer discloses the assigned claims and the corresponding debtors to JM, provides all information necessary for enforcement, hands over the associated documents to JM and notifies the debtors about the assignment. In these circumstances, JM shall also be entitled to revoke the Customer's authority to continue to sell and process the Goods Subject to the Retention of Title and to enforce the assigned claims.

6.7 To the extent that the value of the security provided by the Customer to JM exceeds the amount of JM's claims against the Customer by more than 10%, JM shall release the security to the corresponding extent.

## 7. Notification of Defects | Supplementary Performance

7.1 The Customer must examine the goods immediately after delivery. At the latest 1 week after receipt of the goods, obvious defects in the goods delivered or obvious deviations in quantity exceeding the technical tolerance set forth in Clause 4.2 or incorrect deliveries must be notified to JM in writing. Hidden defects/deviations in quantity/incorrect deliveries must be notified to JM immediately after they are discovered. If these deadlines for notification of defects are not met, the Customer's claims for defects which would otherwise have existed shall be extinguished.

7.2 In the event of justified notifications of defects, JM shall deliver any missing quantities within a reasonable period or, at the option of JM, either rectify existing defects or deliver defect-free goods (hereinafter collectively: **Supplementary Performance**).

7.3 Where the Customer has set JM a reasonable deadline for Supplementary Performance, if the deadline expires and has not been met, the Customer may reduce the purchase price or, in the event of defects which

are not merely insignificant, may withdraw from the contract. The same applies if the Supplementary Performance has failed or if, in accordance with the statutory provisions, the setting of a deadline for Supplementary Performance can be dispensed with.

- 7.4 Even in the event of defects, the Customer's claims for damages or reimbursement of expenses shall only exist subject to the terms set out in Clause 8 and shall otherwise be excluded.

## **8. Liability of JM**

- 8.1 In relation to damages caused by intent or gross negligence on the part of JM's legal representatives or managerial employees, for fraudulently concealed defects, for personal injury (death, bodily injury, or harm to health), for claims under the Produkthaftungsgesetz (German Law on Product Liability), as well as in the event of the express assumption of a guarantee as to quality by JM, JM shall be liable to the Customer for damages and reimbursement of expenses in accordance with the statutory provisions.
- 8.2 In relation to damages arising from a negligent breach of essential contractual obligations and for damages caused by the grossly negligent or intentional conduct of JM's ordinary vicarious agents without the breach of essential contractual obligations, JM shall be liable to the Customer for damages and reimbursement of expenses in the amount of the foreseeable damages typical of the type of contract concerned. JM's essential contractual obligations are those which must necessarily be fulfilled in order to make it possible to properly perform the contract and on compliance with which the Customer may normally rely.
- 8.3 JM's liability under the above Clauses 8.1 and 8.2 shall be limited in amount to double the net invoice sum for the relevant order. Intentional conduct by JM shall be excluded from this.
- 8.4 Except where liability is assumed under Clause 8.1 and 8.2, JM's liability is excluded. In the event of improper handling and processing, incorrect use or defective care of the goods, the Customer's warranty claims, claims for damages and claims for reimbursement of expenses shall be excluded.

## **9. Limitation**

- 9.1 The limitation period for the Customer's claims for defects shall be 1 year from the delivery of the goods. If the goods are items that have been used for a building in a way in which they would normally be used and they have caused a defect in the building, the limitation period for the Customer's claims for defects shall be determined by the statutory provisions. These limitation periods also apply to claims arising from tort which are based on a defect in the goods.
- 9.2 Claims of the Customer other than those based on defects, in particular claims based on breaches of collateral duties, pre-contractual liability or tort shall become time-barred 2 years after the limitation period commences by statute.
- 9.3 The Customer's claims under Clause 8.1 and 8.2 shall become time-barred exclusively in accordance with the statutory provisions.

## **10. Prohibition on Set-off | Restriction on the Right of Retention | Prohibition on Assignment**

- 10.1 The Customer is only allowed to set off their own claims against JM's claims or to enforce a right of retention to the extent that the Customer's claims have been finally determined in a binding judgment which is not subject to appeal, are undisputed or are accepted by JM.
- 10.2 The assignment of the Customer's claims against JM requires the prior written consent of JM. JM will only refuse such consent for an objective reason.

## **11. Confidentiality**

- 11.1 The Customer shall be obliged to maintain secrecy on a permanent basis concerning all information which has become known to it and becoming known to it in the course of the performance of the contract which is recognizable as trade or business secrets of JM and except where it is necessary for the purposes of achieving the objective of the contract concerned, shall not record such information, pass it on or otherwise utilize it.
- 11.2 By means of appropriate contractual arrangements with the employees and agents working for it, the Customer shall ensure that they are also subject to the above-mentioned confidentiality obligation on a permanent basis.

## 12. Final Provisions

- 12.1 The place of performance for the contractual services is Mönchengladbach, Germany, unless provided otherwise in these GTCS.
- 12.2 The contract concluded between the Customer and JM and the provisions of these GTCS represent the entire and complete agreements between the Customer and JM with regard to the subject-matter of the contract and replace all previous agreements, express or implied, whether in writing or made orally. Collateral agreements have not been made, whether in writing, oral or implied.
- 12.3 Amendments or addenda to the contract must be made in writing in order to be valid and must make express reference to the contract. This also applies to an agreement to deviate from or remove this requirement as regards form.
- 12.4 In the event that a provision of the contract or these GTCS is or becomes wholly or partially void, invalid, impracticable or unenforceable, the validity and the enforceability of the remaining provisions of these GTCS shall not be affected. JM and the Customer shall be obliged to agree on a provision to replace the defective provision which comes as close as possible to what JM and the Customer would have agreed if they had realized that the provision was defective, taking into account the spirit and purpose of these GTCS and within the scope of what is legally possible. The same applies to any gaps in the contract or these GTCS. This severability clause is not intended to merely have the effect of reversing the burden of proof, but is intended to exclude the application of § 139 of the BGB in its entirety.
- 12.5 The contract and these GTCS and all rights arising out of or in connection with them shall be subject to the exclusive application of German law, excluding those rules of private international law which lead to the application of the law of a country other than Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 12.6 The exclusive place of jurisdiction for all disputes arising out of or in connection with the contract and these GTCS is – to the extent permitted by law – Mönchengladbach, Germany.
- 12.7 The language of the contract is German. If a version of these GTCS is available in another language on JM's website or in other places, then that other language version is not binding. Only the German version of these GTCS (*Allgemeine Verkaufs- und Lieferbedingungen – AVLB*) is decisive.

**Junkers & Müllers GmbH**

Local Court Mönchengladbach HRB 3591

Version: August 2020