



Allgemeine Verkaufsbedingungen

MUCCE Group GmbH

Scope of application

1. These general terms and conditions of sale shall only apply to entrepreneurs exercising their commercial or independent professional activity and to legal entities governed by public law. They apply to all business transactions between Mucce Group GmbH (hereinafter: „Mucce“) and the Customer, even if no reference is made to them in subsequent contracts. They apply accordingly to the provision of work and services. The term “acceptance” shall apply to delivered products, work performed and services rendered.

2. Additional terms and conditions of the Customer or those which contradict or deviate from these General Terms and Conditions of Sale will not form part of the contract unless Mucce expressly agrees to them in writing. These General Terms and Conditions of Sale shall apply even where Mucce performs its services, without reservation, in full knowledge of the existence of terms and conditions of the Customer which diverge and run contrary to the present terms and conditions.

3. A written record must be made of any agreements which contradict, differ from or are added to these General Terms and Conditions of Sale and which are concluded between Mucce and the Customer for the purpose of contract fulfilment. This also applies to the cancellation of the written form requirement itself.

4. This does not affect any rights to which Mucce is entitled under statutory regulations or as per other agreements in addition to the General Terms and Conditions of Sale.

Conclusion of contract

1. Any quotes by Mucce are subject to change and non-binding.

2. Illustrations, drawings, indications of weight, dimensions, performance and consumption as well as other descriptions of the products, which are contained in the offer documents, are only approximate, unless they have been expressly designated as binding. The above do not constitute an agreement or a warranty of any characteristics or durability of the products, unless expressly agreed as such in writing. Neither do the customer's expectations regarding the products or their use constitute an agreement or warranty.

3. Mucce reserves all ownership, intellectual and other property rights to all offer documents. Third parties may not be granted access to any such documents. The Customer shall return all offer documents to Mucce immediately when requested by Mucce, providing that they are no longer required for the normal course of business. The same also applies specifically to all other documents, designs, specimens, samples and models.

4. The contract is deemed to be concluded when Mucce has confirmed acceptance with a written order confirmation within two weeks of placement or when Mucce executes the order, particularly when Mucce fulfils the order by sending the products. The order becomes valid on the assumption that the Customer has signed the technical specification. An order confirmation issued from automatic systems which does not contain a signature or name is considered a written confirmation. The order confirmation is not binding for Mucce if it contains obvious mistakes or spelling or calculation errors.

5. A lack of response on Mucce's part to offers, orders, requests or other declarations from the Customer shall only be deemed to constitute Mucce's acceptance thereof if this has previously been agreed in writing.

6. Mucce is entitled to withdraw from the contract in full or in part if the Customer's financial circumstances worsen significantly or a justified application to initiate insolvency proceedings or similar action regarding the Customer's assets is dismissed due to lack of assets.

7. In the event of an unauthorised cancellation of an order, MUCCE shall be entitled to charge a cancellation fee of 45 % of the net order value, unless the Purchaser can prove that the damage was less. Further claims of MUCCE remain unaffected.

Scope of delivery

1. The scope of delivery is decided by Mucce's written order confirmation. In order to be effective, any amendment to the scope of delivery by the Customer requires written confirmation by Mucce. Mucce reserves the right to make changes to the design or shape of products, so long as these constitute variances which are cus-tomary within the sector or such variances lie within DIN tolerances or the changes are not considerable and the Customer might reasonably be expected to accept them. The same applies to the choice of material, specifications and design type.

2. Delivery in parts is permitted, as long as such a delivery is within reason, taking into account the interests of both the Customer and Mucce.

3. Upon delivery of software, the Customer is granted a non-exclusive and non-assignable right to use the software and related documentation for the operation of the products for which the software is supplied. The Customer shall not be entitled to make any copies of the software, save and except for a backup copy. Copyright notices, serial numbers and other features serving to identify the software may not be removed or changed. The Customer is obliged to adopt such suitable precautions as to prevent any unauthorised third-party access to the software and the documentation. The Customer must keep the original data carrier delivered to them as well as the backup copy in a place secured against unauthorised third-party access. The Customer must ensure that their employees strictly comply with these terms of delivery and copyright. Mucce's liability for a loss of data shall be limited to the recovery expense that is typically incurred in cases when the Customer has been creating regular and risk-adequate backup copies.

4. In order to allow Mucce to provide its contractual services, in particular, to carry out fault analysis after an error message and to provide maintenance and care services, the Customer shall grant Mucce access to the relevant machinery, facilities and systems and the software installed thereon, to the extent that is necessary for the above stated purposes. This includes the possibility of accessing the software and, after consultation with the Customer, the Customer's files via remote maintenance (e.g., via VPN). If Mucce receives access to the Customer's personal data as part of remote maintenance or is granted such access on-site, Mucce will process this data on behalf of the customer for the purpose of providing the contractual services by way of order processing on instruction within the meaning of Art. 28 of the EU General Data Protection Regulation. According to data protection law, the Customer shall remain the “controller” of the data. Prior to the technical establishment of remote access, Mucce and the Customer shall conclude a separate agreement regarding order data processing.

Delivery period

1. Delivery times (delivery periods and delivery dates) shall be agreed in writing. Delivery periods and delivery dates are not binding, unless Mucce has previously designated them as such in writing.

2. The delivery period commences when the contract is concluded, but not before the Customer has provided the documents, clearances and authorisations that they need to acquire, the Customer has signed the technical specifications, clarification has been made regarding all technical questions and the agreed partial payment has been received or full payment has been received in the case of an international transaction. If a delivery date is agreed, the delivery date is postponed to a reasonable extent if the Customer fails to provide the documents and clearances that they need to acquire in good time, authorisations are not issued in good time, not all technical questions are fully clarified in good time, or the agreed partial payment or, in the case of an international transaction, full payment has not been received in full by Mucce. Compliance with the delivery period is dependent on the Customer's due and timely fulfilment of their remaining obligations.

3. The delivery period is deemed to have been complied with if the products leave the factory or Mucce has sent notification that the products are ready for collection or dispatch before the delivery period expires. Compliance with the delivery period is contingent on own supplies and raw materials being delivered to Mucce correctly and, particularly, on time, unless Mucce itself is responsible for incorrect delivery of own supplies and raw materials. Mucce is entitled to withdraw from the contract in the event of incorrect delivery of its own supplies and raw materials. Mucce shall immediately inform the Customer if Mucce wishes to make use of its right to withdrawal and shall return any pre-payments that the Customer has made.

4. In the event of a delay in delivery, the Customer is entitled to withdraw from the contract if Mucce fails to comply within a reasonable grace period granted by the Customer when the delay in delivery commenced.

Cross-border deliveries

1. In the case of cross-border deliveries, the Customer must provide all the necessary declarations for the relevant authorities regarding export from Germany and import into the country of destination. They must also make arrangements to obtain the documents needed for customs clearance and meet the requirements for any export controls or other restrictions on marketability.

2. Deliveries are subject to the condition that their fulfilment will not be hindered by any national or international regulations, particularly export control provisions and embargoes or other such sanctions.

3. Delays due to export controls extend delivery times accordingly; Delivery dates are postponed in an appropriate manner.

Prices and payment

1. The prices apply ex works unless agreed otherwise and do not include any shipping or packaging costs, processing fees, insurance, statutory tax, duties or other charges. Any costs incurred, particularly costs of the packaging and transport of products, will be invoiced separately. Statutory sales tax will be indicated separately at the statutory rate applicable on the day that the invoice is issued.

2. Unless agreed otherwise, the net delivery price is to be paid within 14 days of the receipt of the invoice. The payment date is the actual date on which Mucce has definitively received the delivery price. In the event of a delay in payment, the Customer shall be required to pay default interest in the amount of 9 percentage points above the applicable basic annual interest rate. This shall not affect any further claims by Mucce.

3. Notwithstanding Paragraph 2, payment shall be made before delivery in the case of international transactions, unless otherwise agreed in writing.

4. The hourly rates for service, maintenance, assembly and repair work, overtime, 24-hour and risk allowances, travel and accommodation expenses and other charges are based on the billing rates of Mucce. Mucce reserves the right to change these billing rates.

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Transfer of risk

1. Risk of accidental deterioration or damage to products is transferred to the Customer as soon as the products are handed over to the person transporting them or the products leave Mucce's warehouse for shipment purposes. If the Customer is to collect the products, risk is transferred to the Customer when notification is given that they are ready for collection. Sentence 1 and Sentence 2 also apply if delivery is made in parts or if Mucce is responsible for other services, such as transport costs or assembling or installing the products on the Customer's premises.
2. If the Customer is in default of acceptance, Mucce can demand compensation for the damage incurred and for any additional expenses, unless the non-acceptance of the products is not attributable to the Customer. In particular, Mucce is entitled to store the products at the Customer's expense for the duration of the delay. Costs for storing the products are charged at a flat rate of 0.5% of the net invoice value per calendar week commenced. This shall not affect any further claims by Mucce. The Customer is entitled to demand evidence that Mucce has incurred no or fewer costs. The same applies if the Customer is in breach of other obligations to cooperate, unless the Customer is not responsible for such a breach. Risk of accidental deterioration or damage to goods is transferred to the Customer at the latest when their default of acceptance commences. If the Customer fails to comply with a reasonable deadline set by Mucce, Mucce is entitled to make use of the products elsewhere and supply the Customer within a reasonable extended period.
3. If dispatch is delayed due to circumstances beyond Mucce's control, the risk is transferred to the Customer when notification is given that the products are ready for shipment.
4. The Customer must also accept delivered products even if they contain insignificant defects, without prejudice to their right to make claims for defects.

Claims for defects

1. The Customer's rights arising from product defects require that the Customer inspects the delivered products promptly after their handover, also by way of test processing or test use, so long as carrying out such tests can reasonably be expected of the Customer; They must notify Mucce of any evident defects in writing immediately, by no later than two weeks of the handover. Mucce must be informed of any hidden defects in writing as soon as they are discovered. The Customer must describe the defects in writing when notifying Mucce. The Customer must also comply with the specifications, notes, guidelines and conditions in the technical notes, installation and operating manuals, and other documents of the individual products, in particular, they must carry out and document proper maintenance and only use or install spare parts and replacement components approved or certified by Mucce. Claims for defects resulting from the violation of these obligations are excluded. In addition, any ATEX certifications shall expire.
2. In the event of product defects, when providing rectification, Mucce is entitled to choose whether to repair the defect or to supply the Customer with a defect-free product. Should rectification be required, Mucce shall be obliged to bear all expenses resulting from such rectification, in particular transport, travel, labour and material costs. Replaced parts become the property of Mucce and must be returned to Mucce.
3. If Mucce is not prepared or not able to provide rectification, the Customer may, at their discretion, withdraw from the contract or reduce the delivery price without prejudice to their right to make claims for damages or reimbursement of expenses. The same applies if rectification is not successful, is unreasonable for the Customer or is delayed beyond a suitable period for reasons for which Mucce bears responsibility.
4. The Customer's right to withdraw is excluded if they are unable to return the service received, unless such an inability results from the nature of the service received, or if Mucce bears responsibility for such circumstances or if the defect was not evident until the product was processed or altered. The right to withdraw is also excluded if Mucce is not responsible for the defect and if the Customer is required to provide compensation for lost value instead of returning the service.
5. No claims for defects can be made in the case of defects due to wear and tear, in particular in relation to wear parts or resulting from incorrect handling, installation, use or storage or if the Customer or a third party makes incorrect modifications or repairs to the products. The same applies to defects which are attributed to the Customer or which are due to a technical reason other than the original defect.
6. Claims of the Customer for repayment of expenses instead of damages in place of performance are excluded, save and except for expenses which would also have been incurred by a reasonable third party.
7. Mucce does not provide any warranties, in particular, any quality or durability warranties, unless otherwise agreed in writing in individual cases.
8. The limitation period for the Customer's claims for defects is one year, unless a purchase of consumer goods takes place at the end of the supply chain. The limitation period is five years if the defective products have been used in a structure as per their customary use and have caused a deficiency in the structure or if the structure itself contains a defect. The limitation period of one year also applies to claims relating to impermissible use due to a defect in the products. The limitation period commences upon delivery of the products. The limitation period of one year does not apply to Mucce's unlimited liability for damages due to a breach of warranty or due to death and injury to body or health, damages caused by intent or gross negligence and for product defects, or if Mucce has assumed procurement risk. If in its response to a claim for defects made by the Customer, Mucce completely rejects the claim, such a response shall not be deemed to constitute the commencement of negotiations concerning the claim or the circumstances surrounding the claim.

Liability of Mucce

1. Mucce is liable without limitation for damages caused by a breach of warranty or due to death and injury to body or health. The same applies to damages caused by intent or gross negligence or if Mucce has assumed procurement risk. Mucce is only liable for slight negligence if it has breached significant obligations related to the nature of the contract and which are essential in achieving the purpose of the contract. In the event of breaches in such obligations, delay and inability of performance, liability is limited to those damages which can be typically expected within the bounds of such a contract. Mandatory, statutory liability for product defects remains unaffected.
2. If the Mucce's liability is excluded or limited, this also applies to the personal liability of Mucce's employees, workers, staff, representatives and vicarious agents.

Product liability

1. The Customer shall not modify the products; in particular, they shall not modify or remove any warnings against improper use of the products. If the Customer breaches this obligation, the Customer shall indemnify Mucce from liability in respect of third-party product liability claims, unless the Customer is not responsible for the modification of the products.
2. If Mucce needs to launch a product recall or a product warning due to a defect in the products, the Customer shall cooperate, to the best of their ability, with the measures which Mucce considers necessary and purposeful. The Customer shall assist Mucce in this process, particularly in the provision of the necessary customer details. The Customer is obliged to bear the costs of the product recall or warning, unless they are not responsible for the product defect according to the provisions of product liability legislation. This shall not affect any further claims by Mucce.
3. The Customer will inform Mucce immediately in writing of any risks involved in using the products and any possible product defects that they become aware of.

Force majeure

1. If Mucce is prevented from fulfilling its contractual obligations, particularly the delivery of products, due to a force majeure, Mucce shall be released from its obligation to perform for the duration of the impediment and granted a reasonable period to resume operations, without being obliged to compensate the Customer for damages. The same applies if it is unreasonably difficult or temporarily impossible for Mucce to fulfil its obligations due to unforeseen circumstances which are beyond Mucce's control, such as labour disputes, actions by authorities, energy shortfall, supplier's inability to deliver, or significant malfunctions or breakdowns. This shall also apply if such circumstances affect sub-suppliers. This shall also apply if Mucce is already in default. If Mucce is released from its obligation to deliver, Mucce shall return any pre-payments that the Customer has made.
2. Mucce is entitled to withdraw from the contract after a reasonable period if such an impediment lasts longer than four months and, as a result of the impediment, it is no longer in Mucce's interest to fulfil the contract. After the expiry of this period and on the Customer's request, Mucce shall immediately declare whether it will make use of its right to withdraw or deliver the products within a reasonable period.

Retention of title

1. The supplied products remain Mucce's property until full payment of the delivery price is made and all receivables to which Mucce is entitled from the Customer on the basis of the business relationship are paid. The Customer is obliged to handle the products subject to retention of title with due care for the duration of the retention of title. In particular, the Customer undertakes to insure the products against fire and water damage and theft at their own expense, with the insured sum being adequate to cover the replacement value. The Customer must provide Mucce with evidence of such a policy cover, if so required by Mucce. The Customer hereby assigns all compensation claims arising from this insurance policy to Mucce. Mucce hereby accepts the assignment. If an assignment is not permitted, the Customer shall instruct the insurance provider to only make payments to Mucce. This shall not affect any further claims by Mucce.
2. The Customer is only permitted to sell products subject to retention of title in the normal course of business. Furthermore, the Customer is not entitled to pledge products subject to retention of title or assign them as collateral or place them at the disposal of third parties in any other way which jeopardises Mucce's ownership of the products. In the event of seizure or other intervention by third parties, the Customer must inform Mucce of the circumstances immediately in writing and provide all necessary information, inform the third party of Mucce's proprietary rights and cooperate in Mucce's actions to protect the products subject to retention of title. If the third party is not able to reimburse Mucce for the legal and extrajudicial costs of asserting Mucce's proprietary rights, the Customer is obliged to reimburse Mucce for the financial loss incurred, unless the Customer is not responsible for the breach of duty.
3. The Customer shall assign receivables from the resale of products with all ancillary rights to Mucce with immediate effect and regardless of whether the products subject to retention of title are resold without or after processing. Mucce shall accept such an assignment of receivables with immediate effect. If an assignment is not permitted, the Customer shall instruct the third-party debtor to make any payments to Mucce only. The Customer is revocably authorised to collect receivables assigned to Mucce in their own name on a trust basis on behalf of Mucce. The collected amounts are to be paid to Mucce without delay. Mucce may revoke the Customer's authorisation to collect payment and the Customer's right to resell for due cause. This is particularly the case if the Customer does not meet their payment obligations towards Mucce in due form, defaults on payment or stops making payments. This is also the case if the Customer applies to initiate insolvency proceedings or a similar procedure with regard to the Customer's assets or a third party's justified application to initiate insolvency proceedings or a similar procedure with regard to the Customer's assets to settle debts is dismissed due to lack of assets. In the event of a blanket assignment by the Creditor, the receivables assigned to Mucce are to be expressly excluded from such assignment.

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4. If required by Mucce, the Customer is obliged to inform the third-party debtor immediately of the assignment to Mucce and provide Mucce with the information and documents which are necessary for the collection.

5. In the event of a breach of contract, particularly if the Customer is in default of payment and fails to comply with a reasonable period of grace set by Mucce, Mucce is entitled to withdraw from the contract without prejudice to its other rights. The Customer must grant Mucce or its representatives immediate access to the products subject to retention of title and surrender them. Following a timely announcement to this effect, Mucce may otherwise dispose of the goods which are subject to retention of title to satisfy the claims due from the Customer.

6. If the Customer processes or alters products subject to retention of title, this is always done on Mucce's behalf. The Customer's expectant right to the products subject to retention of title extends to include the processed or altered product. If the products are processed or altered using items which do not belong to Mucce, Mucce acquires joint ownership of the new item in proportion of the value of its delivered products to the other processed items at the time of processing or alteration. The same applies if the products are linked or mixed with other items not belonging to Mucce, which results in Mucce losing its full ownership. The Customer shall keep the new items in safe custody on Mucce's behalf. In all other respects, the same provisions apply to the item produced by processing, alteration, linking or mixing as to products subject to retention of title.

7. If so required by the Customer, Mucce is obliged to release the securities due to the Customer insofar as the value of the securities exceeds the secured accounts receivable by more than 10 %, after taking into account the reduction in valuation customary in banking. The valuation shall be based on the invoice value of the products subject to retention of title and in the case of receivables - on their nominal value. Mucce may choose the specific items which are to be released.

8. In the case of deliveries under other legal systems where such a provision on the retention of title does not have the same security effect as in the Federal Republic of Germany, the Customer hereby grants Mucce a suitable security interest. If further measures are necessary in this respect, the Customer shall do everything in their power to immediately grant such a security interest. The Customer shall cooperate with all measures which are necessary and required to ensure that such security interests are effective and enforceable.

Confidentiality

1. For a period of five years from the date of delivery, the parties are obliged to maintain confidentiality with regards to all information made accessible to them which is designated as confidential or which is recognisable as a business or company secret due to other circumstances; They shall not record, reuse or distribute such information unless required for the business relationship.

2. The obligation of non-disclosure does not apply if it can be demonstrated that the information disclosed to the receiving party was known before the contractual relationship commenced or was common knowledge or generally accessible before the contractual relationship commenced or it becomes common knowledge or generally accessible through no fault of the receiving party. The receiving party bears the burden of proof.

3. The parties shall conclude a suitable contractual agreement with employees and authorised representatives working for them, in particular their freelance employees, contractors and service providers working for them, to ensure that such persons refrain from any own reuse, distribution or unauthorised recording of such business and company secrets for a period of five years after the date of delivery.

Data protection

1. The parties mutually agree to comply with the statutory provisions on data protection, in particular the EU General Data Protection Regulation („GDPR“), in the execution of the contract and to impose compliance with these provisions on their employees.

2. The parties shall process the personal data received by them (names and contact details of the respective contact persons) exclusively for the purpose of fulfilling the contract (Art. 6 (1) (b) GDPR) and shall protect this data by implementing technical security measures adapted to the current state of the art (Art. 32 GDPR). The parties undertake to delete the personal data as soon as its processing is no longer required. Any statutory retention obligations remain unaffected.

3. Should Mucce process personal data on behalf of the Customer during the execution of the contract, the parties shall conclude an agreement on order data processing in accordance with Art. 28 GDPR.

Final provisions

1. The Customer's rights and obligations may only be transferred to third parties subject to Mucce's prior written consent.

2. Counterclaims filed by the Customer entitle them to offset payments only if such counterclaims have been recognised in a court of law or are undisputed. The Customer may only exercise their right of retention if their counterclaim relates to the same contractual relationship.

3. The law of the Federal Republic of Germany shall apply to any legal relationship between Mucce and the Customer to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

4. The sole place of jurisdiction for all disputes arising from the business relationship between Mucce and the Customer is the district where Mucce's registered office is located. Mucce is also entitled to bring action in the district where the Customer's registered office is located or in any other permitted place of jurisdiction. Arbitration clauses are expressly excluded.

5. Unless agreed otherwise, the place of performance for all services provided by the Customer and Mucce is Mucce's registered office.

6. The language of the contract is German.

7. Should a provision of these General Terms and Conditions of Sale be or become fully or partially ineffective or unenforceable or if these General Terms and Conditions of Sale contain a regulatory gap, this shall not affect the validity of the remaining provisions. In place of the ineffective or unenforceable provision, an effective or enforceable provision which comes the closest to the purpose of the invalid or unenforceable provision shall be deemed to have been agreed. In the event of a gap, the provision which shall be deemed to have been agreed is a provision which corresponds to what the contracting parties would have agreed in accordance with the purpose of these General Terms and Conditions of Sale if the parties had been aware of the existence of such a gap when concluding the contract.