

General Terms and Conditions of Business and Delivery of Müller-BBM GmbH

1 Scope of application

The following terms and conditions apply to all goods and services, except where different terms have been agreed to in writing. The following terms and conditions apply even if upon knowledge of conflicting or deviating terms set out by the client, we perform the service for the client without reservation.

2 Offer and Offer Documents

Our offers are valid for three months.

We reserve ownership rights and copyrights on all documents such as quotations, descriptions, drawings and test reports transmitted by Müller-BBM.

3 Confidentiality

The parties shall undertake to treat all information made available by the contractual parties in connection with the order as confidential and to only transfer them to third parties with the consent of the disclosing party. This applies in particular to the offer or any part of the offer made by Müller-BBM. The parties shall also undertake to treat all information and documents provided by the other party as strictly confidential and to not make said latter accessible to any third party for the entire duration of the contract or in the event where the contract is not concluded. Documents can be sent via e-mail unless agreed to otherwise.

4 Deadlines

4.1 Deadlines are binding only if they have been agreed to in writing. Partial deliveries are permissible and end default of delivery.

4.2 Compliance with the agreed dates is subject to correct and timely self-delivery, and in particular, to the client having fulfilled its obligations to cooperate. Foreseeable delays shall be notified as soon as possible.

4.2 Claims on the basis of non-performance are excluded.

4.3 Other claims for default of delivery shall be determined exclusively in accordance with section 9.

5. Fees / Set-off / Withholding

5.1 The agreed fee is exclusive of VAT. The applicable VAT will be shown separately on the invoice.

5.2 The client is only entitled to carry out withholdings if its claim is based on the same contractual relationship and is undisputed or legally binding.

5.3 In addition, we are also entitled to demand partial payments in advance for services performed in accordance with the terms of the contract.

5.4 The Client's right to offset counterclaims shall only exist if such counterclaims are undisputed or have become res judicata.

5.5 The Client shall only be authorised to exercise a right of retention in the event where said counterclaim is based on the same contractual relationship and is undisputed or has become res judicata.

6 Retention of title

We reserve ownership and usage rights to the contractual object until settlement of all present and future receivables against the client.

7 Warranty

The provisions of the service contract pursuant to § 611 et seq. of the German Civil Code shall be applicable for contracts between Müller-BBM and the client.

In the event where due to a special agreement, the Müller-BBM services are provided under a work performance contract, then work contract rules pursuant to §§ 631 et seq. of the BGB in accordance with paragraphs 7.1 - 7.6 shall be applicable to any deficiencies.

7.1 We guarantee that our services meet the generally accepted technical standards at the time services are performed.

7.2 The warranty rights of the client require that said latter notify deficiencies in a timely manner. § 377 shall apply mutatis mutandis.

7.3 The warranty does not cover minor deviation from the agreed quality.

7.4 Claims by the client for damage caused by the measurement process are also excluded, e.g. due to stimulation with speakers or a tapping machine, or by proper commissioning of technical equipment, or those which result from the action of the client or third party for the purposes of the tests.

The right of withdrawal expires if the client does not withdraw within 14 days after receipt of notification of the refusal or failure of remedy.

7.5 We reserve the right to decide to honour the warranty by rectification or replacement. In the event where we are not able or willing to rectify the deficiency or deliver an adequate replacement, or if rectification/replacement is delayed for an unreasonable period of time due to circumstances for which we are responsible, or should rectification/replacement fail to occur for any other reason, then the client is entitled, at its discretion, to demand redhibition (cancellation of the contract) or an appropriate reduction in the purchase price (reduction). The client must, at our request, and within a reasonable period, state whether it will exercise its right of withdrawal. The withdrawal right may only be exercised in the event of a major deficiency.

The right of withdrawal expires if the client does not withdraw within 14 days after receipt of notification of the refusal or failure of remedy.

7.6 We may refuse subsequent performance, in the event where the client does not meet its payment obligations towards us to the extent corresponding to the faultless portion of the performance.

7.7. Liability for damage claims is stipulated in section 9.

8 Warranty for legal deficiencies

In the event of a deficiency due to the infringement of intellectual property rights of third parties, we shall be liable only if such rights apply in the Federal Republic of Germany, if the client uses the service in a manner consistent with the contract, if a court decision based on infringement by the client of third party intellectual property rights is rendered against the client, and if the client has immediately notified Müller-BBM in writing of the claims asserted by such third party.

9 Joint Liability

9.1 We are liable without limitation for wilful intent and gross negligence, including wilful intent or gross negligence by our representatives or agents.

Insofar as we are not blamed for wilful intent, liability shall be limited to the foreseeable, typically occurring damage.

9.2 We shall also be liable for simple negligence in the event of breach of essential contractual obligations (cardinal obligations).

In this case, our liability shall be limited to contract-typical, foreseeable damage. An essential contractual obligation shall be deemed to exist as such if it is an obligation whose fulfilment the client expects and that it should be able to expect as well.

9.3 In the event of liability for simple negligence in breach of an essential contractual obligations, our contractual and tort liability for property or pecuniary loss shall be 5 times our fees. However, the amount of liability shall be at least € 50,000.

9.4 The exclusion or limitation of our liability, the liability of our representatives or agents, shall not apply to liability for wilful intent to endanger life, limb or health.

Similarly, we are fully liable for deficiencies that involve the absence of expressly promised properties, if the purpose of the warranty was to protect the client against damage that was caused to items other than the object of the performance, as well as if the damage is due to circumstances for which we have assumed a guarantee responsibility.

We are also fully liable for fraudulent concealment of a deficiency.

There is no limitation in respect of liability arising from a strict liability offence, in particular, under product liability law.

This shall not affect possible liability in accordance with the entrepreneur's recourse principles pursuant to §§ 478 et seq of the BGB.

9.5 Insofar as no other agreement differing from the above has been reached, liability - for whatever legal reason - shall be precluded.

9.6 The same applies to claims arising from culpa in contrahendo.

9.7 Sections 9.1 to 9.5 shall apply accordingly, in the event of reimbursement of expenses, with the exception of reimbursement of expenses under §§ 439 II BGB.

9.8 Exclusions and limitations of liability shall also apply to our legal representatives and agents.

10 Prescription

10.1 All claims by the client on whatever legal grounds are subject to prescription after 12 months from delivery of the contractual object unless otherwise agreed in individual contracts.

10.2 Statutory deadlines are valid for compensation claims under section 9.4. The same applies to warranty claims where longer periods are imposed by law. Said latter applies to buildings and items used for construction works according to § 438 I BGB No. 2, further recourse claims pursuant to § 479 BGB and claims for construction deficiencies according to § 634 a I BGB.

11. Performance, Jurisdiction, Applicable Law

11.1 Our registered office shall be the place of performance unless otherwise provided for in the contractual agreement.

11.2 It is agreed that the courts of Munich shall have jurisdiction for contracts with fully qualified merchants and legal entities under public law.

11.3 The contractual relationship is governed exclusively by German law, to the exclusion of the UN Sales Convention (CISG).

As of 2013-02