

Müller-BBM Cert GmbH General Terms and Conditions

1 Scope of application

1.1 The following terms and conditions are exclusively applicable to all deliveries and services unless otherwise agreed in writing. The following terms and conditions also apply when rendering services to the customer without reservation and we are aware of the client's terms and conditions conflicting with or deviating from our terms and conditions.

1.2 Our terms and conditions apply solely to companies as defined by § 310(1) German Civil Code.

2 Offers and offer documentation

2.1 Our offers are valid for three months from the date of the respective offer.

2.2 We reserve ownership and copyright in all documents provided by us in connection with submitting the offer, such as particularly offers, descriptions, illustrations, drawings, calculations. Any disclosure to third parties by the client requires our express written approval.

3 Subcontracting/transferability

3.1 We shall be entitled to use subcontractors for order fulfilment without prior coordination with or the approval of the client.

3.2 We shall further be entitled to transfer rights and obligations arising from this contract.

4 Confidentiality/disclosure of documents

4.1 The parties agree to keep all information provided by the other contracting party within the context of the order confidential, and only disclose said to third parties with the approval of the contracting party from which it was obtained. This particularly also applies to the offer of Müller-BBM or parts thereof.

The contracting parties further agree to keep all information and documents provided by the other party strictly confidential, including beyond the expiration of the contract or if a contract is not concluded, and not to make said accessible to third parties.

4.2 The obligation to confidentiality does not apply to information the receiving party was already lawfully aware of prior to receiving the information, lawfully obtained by third parties, or developed by the receiving party independently from the information provided.

The obligation to confidentiality further does not apply when required to disclose information to authorities or within the context of judicial proceedings.

4.3 Unless otherwise agreed, documents may also be e-mailed without encryption unless related to personal data concerning third parties.

4.4 Upon request the information provided must be returned or erased. During the warranty period this obligation does not apply to data provided by the client relevant to the contracted result.

5 Dates

5.1 Dates are only binding when agreed in writing. Partial deliveries are permitted and clear late deliveries.

5.2 The agreed dates are subject to correct and timely supply, in particular the client having met his obligations to cooperate. We shall inform of any delays as soon as possible.

5.3 Claims arising from delayed delivery shall be determined solely according to Item 12.

6 Fee/prohibition of set-off/retention

6.1 The agreed fee is subject to the statutory value-added tax applicable on the invoice date. The respective value-added tax shall be shown separately in the invoice.

6.2 For projects measured in periods, the remuneration shall be payable at the end of the respective periods.

6.3 We shall further be entitled to demand instalments for services rendered as contracted.

6.4 The client shall only be entitled to offset counter-claims which are undisputed or established as final and resolute.

6.5 The client shall only be entitled to retention if the counter-claim is based on the same contractual relationship and is undisputed or established as final and resolute.

7 Retention of title

We reserve ownership and right of use in the object of the agreement until all receivables arising from the contract have been satisfied by the client.

In the event of infringement by the client, particularly payment default, subject to prior dunning the client shall be obligated to return the object of the agreement.

Our accepting the return of the object of the agreement constitutes rescission of the contract.

8 Right of use

The client shall be granted non-exclusive, non-transferable, non-licensable, free of charge license in the contracted services resulting from performance of contract for the contracted purpose.

9 Liability for defects

Contracts between Müller-BBM and the client are subject to the service contract provisions of § 611 ff German Civil Code.

Provided our services are owed on the basis of a special sales contract or a contract to produce a work, any defects in the service contracted work are subject to the respective provisions of the sales contract according to §§ 433 ff German Civil Code, or for defects in service according to the contract to produce a work according to §§ 631 ff German Civil Code in accordance with sections 12.1 - 12.8.

9.1 We guarantee the services to be rendered by us comply with the generally recognised rules of technology at the time rendered.

We make no warranties, particularly not for contracted qualities.

9.2 The warranty rights of the client require timely submission of the claim. § 377 German Commercial Code applies accordingly.

9.3 Warranty claims for negligible deviation from the agreed qualities shall be excluded.

9.4 Any claims by the client arising from testing are further excluded. Warranty is particularly excluded for damages resulting from exposure to speakers or hammer mills, or due to proper use of building service installations. Warranty is further excluded for damages resulting from measures carried out by the client or third-parties for testing purposes.

9.5 We reserve the right to determine whether to repair or replace a defective product. In the event we are unwilling to repair the defect or provide a replacement, particularly when delayed for an unreasonable amount of time for reasons within our control, or if the repair or replacement fails in any other way, the client is at his discretion entitled to demand redhibition (rescission of contract) or a discount (corresponding reduction in the purchase price).

Upon inquiry the client is obligated to notify us within a reasonable amount of time whether he intends to exercise his right to rescind. The right to rescind may only be exercised for material defects.

The right to rescind expires unless exercised by the client within 14 days of receiving the notice of refusal or supplementary performance failing and being informed by us of the right to rescind expiring.

9.6 We can refuse supplementary performance if the client fails to meet his payment obligations for the portion of the service free from defect.

9.7 Liability for damages shall be based on Item 12.

10 Liability for legal defects

In the case of a legal defect for infringement of property rights of third parties we shall only be liable if these rights apply in the Federal Republic of Germany, the client uses the goods/services owed by us as contracted and the third party claim is legitimate and the client promptly notified Müller-BBM in writing.

We assume no guarantees.

11 Acceptance of contracted work

Contracted work:

11.1 Formal acceptance is only required when explicitly agreed in writing.

11.2 If acceptance is not required, the contracted work is considered accepted after 12 business days from the time the object of the agreement was delivered.

The same applies if the client uses the contracted service. In this case it is considered accepted after 12 business days from when it was first used.

11.3 The client must claim reservations for known defects or contract penalties within 12 business days.

11.4 The client cannot exclude notional acceptance according to § 640(II)(1) German Civil Code.

12 Joint and several liability

12.1 We shall only be liable without restriction for deliberate acts and gross negligence, including deliberate acts or gross negligence of our representatives or vicarious agents.

Unless we are charged with deliberate acts, liability is limited to the foreseeable typical damages.

12.2 In the case of culpable infringement of material contractual obligations (cardinal duties) we shall also be liable for ordinary negligence.

In this case our liability is also limited to the foreseeable damages typical for the contract.

Material contractual obligations are obligations essential for implementation of the contract and the compliance with which the client can routinely rely on.

12.3 In the case of liability for ordinary negligence in infringement of material contractual obligations our liability under the contract and offences for material and financial damages shall be limited to the amount of our fee. The liability amount, however, shall be at least € 50,000.

In the case of consequential harm caused by a defect we are further only liable for damages covered by our liability insurance.

12.4 The exclusion or limitation of our liability and the liability of our representatives or vicarious agents does not apply to liability for culpable injury to life, body or health.

We shall further be liable for defects in characteristics explicitly assured in writing if the purpose of the guarantee was to protect the client against damages which were not caused to the actual subject of agreement.

We are further fully liable for fraudulent concealment of defect.

There further shall be no limit to liability for absolute offences, particularly under the Product Liability Act.

Furthermore, any liability based on the principles of the company's recourse according to §§ 478 ff. German Civil Code remains untouched.

12.5 Unless otherwise stipulated above, liability – irrespective of the legal basis - shall otherwise be excluded.

12.6 The same applies to liability pursuant to culpa in contrahendo.

12.7 In the case of reimbursement of expenses, with the exception of reimbursement of expenses according to § 439 II German Civil Code, Items 12.1 to 12.5 apply accordingly.

12.8 Any exclusion or limitation of our liability also applies to our legal representatives and vicarious agents.

13 Statute of limitations

13.1 The client's right to claims, irrespective of the legal bases, expire after 12 months unless otherwise agreed in individual contracts. This does not apply to liability for culpable injury to life, body or health.

13.2 The statute of limitations starts the day the object of the agreement is delivered, for contracts to produce a work upon the work being accepted according to Item 11.

13.3 Claims for damages under Item 12.4 are subject to the statutory periods. The same applies for claims for defects when longer periods are prescribed by law. This particularly applies to construction and building products according to § 438 I No. 2 German Civil Code, furthermore recourse action according to § 445 b German Civil Code and claims for construction defects according to § 634 a I No. 2 German Civil Code.

14 Place of fulfilment/jurisdiction/applicable law

14.1 Unless otherwise stipulated in the contract, the place of fulfilment is our registered office.

14.2 For contracts with fully qualified merchants or corporate bodies under public law the agreed jurisdiction is our registered office.

Legal action is only permitted before ordinary jurisdiction.

Arbitration agreements are therefore expressly dis-sented.

14.3 The contractual relationship is solely subject to German law under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

15 Formal requirements

All legally relevant declarations and notifications issued by the client and submitted either to us or to a third party require written form.

Date 2018-08