

General Conditions of Sale

1. General

- 1.1 These General Conditions of Sale shall apply to all supplies of Products and Services of Menzi Muck AG, CH-9464 Rüthi and its affiliated companies in Switzerland and abroad (hereinafter referred to as „Menzi Muck“ or “Supplier“) to Customer.
- 1.2 Deviating or supplementary conditions, such as Customer’s General Conditions of Purchase, oral agreements as well as changes and amendments to the contract are binding only if accepted by Menzi Muck in writing.
- 1.3 Any communication transmitted in traceable form (such as telefax or E-Mail) shall equally be considered to have been made “in writing.

2. Conclusion of Contract, Scope of Supply

- 2.1 Offers not specifying a period for acceptance are valid 30 days from the date of dispatch by Menzi Muck.
- 2.2 Subject to any government approvals that may be required for the transaction or the fulfilment of any other conditions agreed between the parties, the contract becomes effective upon Customer’s receipt of Menzi Muck’s order confirmation.
- 2.3 Only Menzi Muck’s order confirmation shall govern the scope and execution of the contract.
- 2.4 Menzi Muck may deviate from the contractual specifications as long as the changes have no negative impact on price, function, quality and time of delivery of the Products.

3. Drawings, Technical Documents and Software

- 3.1 Data in drawings and other technical documents or software are binding only if they are explicitly referenced to be an integral part of the contract.
- 3.2 Menzi Muck reserves all rights in the drawings and other technical documents or in the software supplied to Customer. Customer acknowledges these rights and will not - without Menzi Muck’s prior written consent - make these documents or the software available to third parties or use them for other than the agreed purpose.
- 3.3 If software forms part of the scope of supply, Customer is granted a non-exclusive, non-transferable license to use the software for the agreed purpose. Copies may be made only for archival or debugging purposes or in connection with the replacement of a defective data carrier. Without Menzi Muck’s prior consent, the Customer is not entitled to update, upgrade, enhance disassemble, decompile, decode or reverse-engineer the software. In case of breach of one of these undertakings Menzi Muck may revoke the right to use the software with immediate effect.

4. Applicable Regulations and Standards

Unless otherwise agreed the scope of supply complies with the relevant regulations and standards in Switzerland and the EU.

5. Prices, Terms of Payment, Waiver of Set-Off

- 5.1 Unless otherwise agreed in the contract the prices are understood CPT (carriage paid to) agreed place of destination (Incoterms 2010 or latest edition).

- 5.2 For supplies to be delivered later than 4 months after conclusion of the contract Menzi Muck reserves the right to increase the price of the supplies in accordance with an increase in labour costs or an increase of the prices charged by its suppliers.
- 5.3 Unless otherwise agreed in the contract the price for the supplies and services shall be due and payable within the later of 30 days from the date of delivery or the receipt of invoice, without any deductions for cash discounts, costs, taxes, dues or other charges.
- 5.4 In case of payments by letter of credit, Customer shall bear the costs of opening, notification and confirmation.
- 5.5 Payments shall be deemed effected, as soon as the amount due is freely available in Swiss Francs or in the agreed currency on the bank account indicated by Menzi Muck.
- 5.6 If Customer is in arrear with a payment by more than 14 calendar days, the balance of the total contract price shall become due immediately. In addition, Menzi Muck – without having to set any additional deadlines – shall be entitled to rescind the contract and claim damages in an amount of at least 10 % of the contract price.
- 5.7 Customer may only set-off claims which are either expressly acknowledged by Menzi Muck or finally awarded by the competent court.
- 5.8 Provided it has no material impact on the use of the Products, the delay of an insignificant part of the supplies does not entitle the Customer to defer payments

6. **Retention of Title**

- 6.1 Until the contract price is fully paid the Products shall remain Menzi Muck's property.
- 6.2 Should the Customer resell Products to which title is reserved in the ordinary course of business, he shall be deemed to have tacitly assigned to Supplier the receivables deriving from the respective resale, together with all collaterals, securities and reservations of title until all of Supplier's and its affiliated companies' claims towards Customer have been settled. Subject and up to Supplier's revocation, such assignments shall not preclude Customer from collecting the assigned receivables.

To the extent the value of the Products to which title is reserved, together with any other collateral, exceeds the Menzi Muck Group's claims against the Customer by more than 20%, the Supplier shall, at Customer's request re-assign the respective receivables to him.

- 6.3 If Customer is in arrear with its payments by more than 14 calendar days, the Supplier may request the return of the Products at Customer's risk and expense or to collect the Products in Customer's premises.

In addition, the Customer shall pay to the Supplier a compensation for depreciation of the value of the Product and a rent for the term of its possession. In the first commenced year the compensation for depreciation shall amount to 20 %, in each following commenced year an additional 10% of the contract price. The rent to be paid in addition to the compensation for depreciation shall amount to 1.5 % of the contract price for each commenced month of possession.

A positive or negative balance in favour of or to be charged to Customer resulting from his claim for repayment of partial payments of the contract price already made on one side and the aforementioned claims of Supplier for depreciation and rent on the other side shall be due and payable within 30 days from the date of return of the Product.

7. Delivery Period

7.1 The term of delivery shall commence as soon as the contract has been concluded, all regulatory approvals, such as export-, import- and payment permits have been obtained, any advance- or prepayments or the notification of the opening of a letter of credit have been received by Menzi Muck and soon as all technical documents agreed between the Parties have been supplied or approved by Customer

7.2 Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended

a) if Menzi Muck is prevented from performing the contract by Force Majeure. Force majeure shall be deemed to be any unforeseeable event beyond Menzi Muck's control which renders Menzi Muck's performance commercially unpractical or impossible, such as delayed or defective supplies from sub-contractors or sub-suppliers, labour disputes, acts of government, shortage of materials or energy, serious disruptions in Menzi Muck's works, such as total or partial destruction of plant and equipment or the breakdown of essential production facilities, serious disruptions of the means of transport, e.g. impassable roads.

Should the effect of Force Majeure exceed a period of two (2) months, either Party may terminate the contract forthwith. In such case Customer may not claim damages.

b) if Customer is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed terms of payment or if he has failed to timely provide the agreed security.

c) if – after conclusion of the contract – the Product is being changed or amended at Customer's request

7.3 If for reasons attributable to Menzi Muck the agreed term of delivery or a reasonable extension thereof is exceeded, Customer - upon expiry of a last extension of at least one month – may, subject to the limitation in liability in Clause 10 - exert its rights at law.

7.4 Part shipments of individual Products shall be permitted and Menzi Muck may invoice each part shipment.

7.5 If Customer fails to take delivery of the Products notified as ready for despatch or if he cancels the order without cause and if he fails to remedy such breach within latest one calendar week from Menzi Muck's notice, Menzi Muck shall be entitled to rescind the contract and claim damages pursuant to Clause 5.6.

8. Inspection, Acceptance

8.1 Transport damages, missing or wrong items must be noted on the notice of receipt and documented by photo records.

8.2 Unless a joint acceptance test is agreed, Customer shall within one week after receipt conduct an inbound inspection of the Product, in particular regarding function and performance and shall notify Menzi Muck any such defects or deficiencies latest within a week after discovery of the defect.

9. Warranty

9.1 In case of delivery of the wrong or defective Product or in case of defects resulting from false commissioning-, operation- or maintenance instructions or in case of faulty advice, Customer may, at Menzi Muck's election and cost, either request repair or replacement within a reasona-

ble time period. Replaced Products or parts shall, at its request, become Menzi Muck's property again.

- 9.2 If a defect does not significantly impair the proper function of a Product and if Customer, nevertheless, requests that the defect is not remedied within a reasonable period during the next periodic maintenance service of Menzi Muck in Customer's area but immediately at the location of the defective Product, Menzi Muck may charge the travel and labour costs incurred on account of the travel to and from the location of the defective Product.
- 9.3 For Products which are manufactured according to specifications, drawings or patterns supplied by Customer, Menzi Muck's warranty shall be limited to defects in material and workmanship.
- 9.4 Customer is entitled to rescind the contract or to demand a reduction of the contract price,
- if the repair or replacement of the defective Product is impossible; or
 - if Menzi Muck refuses the repair or replacement or if for reasons attributable to Menzi Muck the repair or replacement is delayed.
- 9.5 The warranty given hereunder shall not apply to defects or damages resulting from normal wear and tear, in particular with regard to guide plates, bolts and bushes, tires, hydraulic hoses, service material (belts, filters, batteries, small parts (light bulbs, wiper blades) or glass, improper storage and maintenance, failure to observe the commissioning- or operating instructions, overstressing or overloading, unsuitable operating media, improper repairs or alterations by Customer or third parties, defects resulting from the use of other than original spare parts or other reasons beyond Menzi Muck's control
- 9.6 No action or claim may be brought by Customer on account of any alleged breach of warranty or any other obligation or liability of Menzi Muck after the expiration of twelve (12) months from receipt of the Product by the end customer, latest, however, within eighteen (18) months from the date of delivery by Menzi Muck.

The warranty for repaired or replaced parts or Products expires 12 months from the date of replacement or repair.

Reservation is being made for longer statutes of limitation under mandatory law

10. **Limitation of Liability**

The rights and remedies of Customer are exclusively governed by these General Conditions of Sale and shall be in lieu of any remedies at law. All further claims for damages, reduction of the contract price, termination of or rescission of the contract are excluded.

Customer shall not be entitled to claim damages for loss of production, loss of use, loss of orders, loss of profit, loss of anticipated savings, loss of data, costs for dismantling or reinstallation of the Product or handling costs for claims management, as well as for claims of third parties for such damages or costs.

Menzi Muck's liability for damage to property or recourse claims for injury or death of persons shall be limited to CHF 500'000 per occurrence and in the aggregate to CHF 200'000 per calendar year.

This limitation of liability equally applies to the extent Menzi Muck is liable for acts or omissions of its employees or third parties engaged in the performance of its obligations.

The limitation does not apply to the extent Menzi Muck's liability is mandatory, in particular in case of unlawful intent or gross negligence on the part of Menzi Muck and its employees or third parties engaged in in the performance of the contract, in case of fraudulent concealment of a de-

fect, for direct claims arising from personal injury or death or under Menzi Muck's mandatory liability under applicable Product Liability Acts.

11. Protection of Personal Data

Menzi Muck is entitled to processes and store personal data, whether such data originate from Customer or third parties. Customer agrees that Menzi Muck, to the extent necessary for business transactions, may disclose such data also to recipients abroad.

12. Spare Parts

Spare Parts to the Products may be bought from Menzi Muck during 10 years from the date of delivery of the Product at the prices and terms and conditions of sale in force at the date of order.

Should a spare part no longer be available during or after the aforementioned 10 year period, Menzi Muck shall exert its best efforts to inform Customer timely in advance in order to allow him to place a last order.

13. Place of Fulfilment, Applicable Law, Jurisdiction

13.1 Place of fulfilment for all mutual obligations of the parties shall Supplier's place of business.

13.2 Cross-border sales shall be subject to Swiss law, the UN-Convention on Contracts for the International Sale of Goods (CISG) being excluded; all other sales shall be subject to the laws in force at Supplier's place of business.

13.3 Exclusive place of jurisdiction for all claims out of or in connection with the contract shall be Supplier's place of business. Supplier may also bring action in any other competent court.

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