



engineering - fabrication - servicing

**TOOLS FOR BELTS  
SPECIAL ENGINEERING  
CONVEYOR TECHNOLOGY  
COMPONENTS**

by



## General Terms and Conditions

Sales terms for the supply of machines and appliances for domestic business.

### I. General information

1. These conditions form the basis of all supplies and services as well as any separate contractual agreements. Any deviating purchasing conditions of the orderer do not become subject matter of the contract through the order being accepted, and are therefore not expressly contradicted especially. A contract materialises – in the absence of any special arrangement – upon our written order confirmation.
2. Müssel Maschinenbau GmbH reserves itself the property right and copyright of designs, samples, cost estimates, and similar information of a tangible and immaterial kind – even in electronic form; they may not be made accessible to thirds. We commit ourselves to make information and documents that have been identified by the orderer as confidential, only accessible to thirds with the orderer's agreement.
3. The documents pertaining to the offer such as technical data, designs, illustrations, references to standards as well as data in advertising material are not warranties of characteristics, as far as they are not expressly referred to as such in writing.
4. We exclusively deliver our goods to commercial companies.

### II. Price and payment

1. Our prices are quoted plus legal value added tax. Postage and packaging costs are at the orderer's expense, as far as nothing else has been agreed upon. If the commodity is supplied in packaging, then we charge for packaging on a time and material basis; in the context of legal regulations we take back packaging material supplied by us, if returned to us carriage-paid by the buyer within an appropriate time period.
2. Information given over the telephone regarding prices, availability etc. become binding only upon written confirmation. We are not responsible for errors caused through hearing and misunderstandings arising from telephone orders.
3. We are only obligated to grant discounts and other remunerations if agreed upon in writing during or before the placing of the order.
4. Minimum order value 50 EURO.
5. If nothing else is agreed upon our term of payment is 10 days 2%, 30 days without deduction each starting from invoice receipt and maturity.
6. Invoices for amounts under 50 EURO as well as for fittings, repairs, moulds and proportions of tooling costs each fall due immediately and are payable without deductions.
7. In the case of orders over 10,000 EURO and in the absence of any special agreement, the payment is to be made strictly net to our account: 1/3 advance payment after receipt of the order confirmation, 1/3 as soon as the orderer has been informed that the main parts are ready for dispatch, the remaining sum within one month following the passing of risk.
8. The orderer has the right to withhold payment or to set off with counterclaims only as far as his counterclaims are undisputed or made legally valid.
9. If the term of payment is exceeded, starting from default at the latest, we are entitled to the legal default interest. The asserting of further damage caused by default is reserved.
10. Checks and bills of exchange are only accepted as payment against refunding the costs customary in banking. We are not responsible for the punctual presentation of checks and bills of exchange. No invocation of the customer of Article 53 Paragraph 1 of the Bills of Exchange Act is possible. Default interest and bill charges are immediately payable.
11. If delay of payment or other circumstances make the customer's creditworthiness appear doubtful, we have the rights as set out in §321 BGB (German Civil Code). We are then entitled to make all our claims due immediately and as far as we are in possession of bills of exchange, we are entitled to claim against the defaulter before maturity. We only need to make further supplies if the customer provides a payment bond or advance payment. Our right to withdraw from these services remains unaffected.

**Address:**  
Müssel Maschinenbau GmbH  
Reichelsweierstraße 8  
95615 Marktrechwitz  
GERMANY

**Contact:**  
Tel.: +49 9231 9980-0  
Fax: +49 9231 9980-80  
kontakt@muessel.com  
www.muessel.com

**Management board:**  
Dipl. W.-Ing. (FH) Hannes Müssel  
Registered office: Marktrechwitz  
Court of registration: AG Hof, HRB B1217  
VAT No.: DE134200510

**Bank account:**  
Sparkasse Hochfranken (BIC: BYLADEM1HOF)  
IBAN: DE7678050000810018481  
Deutsche Bank AG Bayreuth (BIC: DEUTDEMM760)  
IBAN: DE70760700120888410800

If payment is delayed we are additionally entitled to demand the commodity to be returned to us after an appropriate respite has expired as well as to prohibit the resale and further processing of the supplied commodity. Taking back does not mean withdrawal from the contract. The buyer can avert all these legal consequences through payment or payment bond at the amount of our endangered pecuniary claim. Provisions of the Bankruptcy Act remain unaffected by the preceding regulation.

12. The cancelling of custom-made products that are specially made according to customer details is not at all possible and there will also be no refunding of the purchase price. Cancellation is only possible with products from the standard program if these are in the same condition as when supplied and are unused. When a supplied commodity is returned from the standard program which is not a stock commodity (specially manufactured for the customer order), 10 per cent of the invoice amount is deducted when crediting plus the incurred testing costs. With series products (stock commodities), the testing and handling expenses are deducted from the credit once taken back. The commodity should generally be delivered carriage-free, any additional expenses arising for our account will be taken into consideration when crediting.

### III. Delivery time, possibility to deliver

1. Delivery deadlines or periods are binding only if they have been accepted or confirmed by us in writing. Times for delivery begin once the order confirmation has been sent off, although not before the production of documents, authorisations and releases to be provided by the orderer, as well as receipt of an arranged advance payment. Their being observed assumes that all commercial and technical issues between the Contracting Parties have been resolved. If this is not the case, then the delivery time extends as appropriate. This does not apply if we exclusively are to blame for the delay.
2. The time for delivery is observed if the delivery item has left our company by the time limit or it has been reported as ready for dispatch. If an acceptance is to take place, the acceptance date is final (except with an authorised refusal of acceptance), or alternatively an announcement of the readiness to accept.
3. If the shipping and/or acceptance of the delivery item are delayed for reasons for which the orderer is responsible, then he will be charged for the costs arising from the delay, starting one month after the dispatch or the readiness to accept has been announced.
4. If non-compliance with the delivery time is traced down to force majeure, industrial action or other events, as well as faulty provided parts and outsourced parts that lie outside of our sphere of influence, then the delivery time extends as appropriate. This also applies if the circumstances arise through subcontractors. We inform the orderer of such circumstances as soon as they become known to us. If performing the contract becomes unreasonable for one of the parties, then it can withdraw insofar from the contract.
5. Partial deliveries are permissible and can be charged for separately.
6. If we end up being delayed and this is our fault, the buyer can withdraw from the contract, after an appropriate respite set for us has passed, insofar as the commodity is not ready for dispatch up until the time limit has passed.
7. If it can be proven that damage has arisen for the orderer through delivery default for which we are responsible and non-adherence to the respite, he is then entitled to demand a fixed default penalty. This amounts, for each full week of the delay, to 0.5% overall, although no more than 5% of the value of the concerned part of the complete delivery that cannot be used in time or as stipulated in the contract due to the delay. Further claims from default of delivery are determined exclusively according to section VII.2 of these conditions.

### IV. Passing of risk, acceptance

1. The risk is transferred to the orderer once the delivery item has left our company, and also if partial deliveries are being carried out or we have agreed to provide other services, e.g. shipping and handling or deliveries and assemblies. If an acceptance is to take place, this is decisive for the passing of the risk. It must be made without delay at the acceptance date, or alternatively after we have announced the readiness to accept. The orderer may not refuse acceptance because of a non-substantial fault being present.

2. If dispatch or acceptance is delayed or does not take place due to circumstances over which we have no control, the risk passes to the orderer from the day on which the dispatch or willingness to accept are announced.

## V. Retention of title

1. All supplied goods and services remain our property until all claims from the business relation have been satisfied, on whatever legal grounds, including claims arising in the future or conditional claims.
2. Handling and processing of the commodity subject to retention of title are carried out, for us as manufacturers, in terms of §950 BGB (German Civil Code), without committing ourselves. The finished commodity is considered as a commodity subject to retention of title in terms of sub-paragraph V/1. If the orderer processes, joins and mixes the commodity subject to retention of title with other goods, we are entitled to co-own the new object in the proportion of the invoice value of the commodity subject to retention of title to the invoice value of the other goods used. If our ownership expires through joining or mixing, then the buyer transfers to us, starting from now, the property rights on the new entity or object to which he is entitled on the scale of the invoice amount of the commodity subject to retention of title and keeps it free of charge for us. Joint property arising hereafter is considered as a commodity subject to retention of title.
3. We are entitled to insure the delivery item against theft, breakage, fire damage, water damage and other damage at the expense of the orderer if the orderer cannot prove that he has taken out insurance himself.
4. The orderer may only sell the delivery item within his usual business dealings and on his normal trading conditions and as long as he is not behind schedule, provided that claims from resale are transferred to us. He is not entitled to other dispositions through the commodity subject to retention of title, such as pawning or assigning as collateral. In the case of distress as well as confiscation or other dispositions through thirds, he has to inform us immediately.
5. The claims of the buyer from the resale of the commodity subject to retention of title are assigned to us starting from now. They serve for security to the same extent as the commodity subject to retention of title.  
If the commodity subject to retention of title is sold by the buyer together with other goods not sold by us, then the assignment of the claim from resale applies only at the amount of the resale value of the respective commodity subject to retention of title sold. With the sale of goods of which we have co-ownership shares pursuant to sub-paragraph V/2, the claim assignment applies at the amount of these co-ownership shares.
6. If the orderer behaves contrarily to the terms of the contract, in particular concerning delay in payment, we are entitled to take back the delivery item following a reminder and the orderer is bound to restitution.
7. Due to the reservation of title, we can only demand the return of the delivery item if he has withdrawn from the contract.
8. The application for opening insolvency proceedings entitles us to withdraw from the contract and to demand the immediate return of the delivery item.

## VI. Claims for defects

We have to be notified immediately in writing regarding any evident defects of the commodity after delivery. If this is not done, then the commodity is considered as accepted. We must be informed immediately of non-evident defects in writing after they have been discovered. The buyer has to give us the opportunity to see the defects for ourselves, and in particular to make the commodity complained of available on request. If he does not do this, then he cannot plead defects of the commodity. We provide a guarantee for material defects and defects of title of the supply, excluding further claims – subject to section VII - as follows. Material defects:

1. All those parts have to be repaired free of charge at our discretion and within an appropriate period or a faultless replacement provided (supplementary performance). Replaced parts become our property.





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2. In order to carry out all repairs and replacements that we deem necessary, the orderer has, after arrangement with us, to provide the necessary time and opportunity; otherwise we as suppliers are exempted from liability for the consequences arising from this. Only in urgent cases where operating safety is in danger or as a defence against excessive damage, where we are to be informed immediately, does the orderer have the right in arrangement with us to eliminate the deficiency himself or have done so by thirds and to demand damages for the necessary expenditure.
3. We bear the costs of the spare part including shipment of the direct costs resulting from the repair or replacement, as far as the complaint turns out to be justified– In addition we bear the costs of assembly and disassembly as well as the costs of hiring any fitters and assistants that may be required including travel expenses, as far as no excessive burden arises for us thereby and the fitting as well as the kind of fitting of the supplied commodity were indicated to us when the contract was concluded and was agreed on by us; the proportion to the purchase price of the commodity must be appropriate. We do not bear expenditure arising though the sold commodity being placed at another location than the domicile (delivery address) or one of the buyer's branches.
4. The orderer has, in the context of legal regulations, the right to withdraw from the contract, if we, under consideration of legal exceptional cases, allow an appropriate period set for him for repairs or replacement due to a material defect elapse without results. If there is merely an insignificant defect, the orderer only has the right to a reduction of the contract price. The right to a reduction of the contract price remains otherwise impossible. Further claims are determined by section VII.2 of these conditions.
5. There is no guarantee in the following cases in particular: Unsuitable or improper use, incorrect operation, faulty assembly and/or initial start-up by the orderer or thirds, natural wear and tear, incorrect or careless treatment, improper maintenance, unsuitable operation resources, unsatisfactory construction work, unsuitable foundation, thermal, abrasive, chemical, electronic or electrical effects - if we are not responsible for these as a supplier.
6. If the orderer or thirds inappropriately carry out repairs, the supplier assumes no liability for the consequences arising from this. The same applies to amendments of the delivery item made without the prior agreement of the supplier
7. Further claims are not possible. This applies in particular to claims for damages, which did not occur in the commodity itself (consequential damage). Our liability for the absence of warranted properties are also pursuant to sub-paragraph IX. We cover the necessary expenditure for the purpose of repairs or replacement in the context of our general liability according to sub-paragraph IX. Defects of title.
8. If the use of the delivery item leads to breaches of industrial property rights or copyrights inland and we are responsible for this, the right for further use is, as a matter of principle, granted to the orderer at our expense or the delivery item modified in a reasonable manner for the orderer so that the breach of trademark rights no longer exists. If this is not possible under economically reasonable conditions or within an appropriate period, the orderer is entitled to withdraw from the contract. Among the specified conditions we have a right to withdraw from the contract. Moreover the orderer will be exempted by us from undisputed or legally final claims of the trademark right bearers concerned.
9. The obligations on our part specified in section VI. 7 are, subject to section VII. 2, final for the case of trademark right or copyright infringement. They only apply if: - the orderer has informed us immediately of asserted trademark right or copyright infringements - the orderer supports us to an appropriate extent in the defense of the asserted claims or makes it possible for us to carry out the modification measures pursuant to section VI. 7,- all defense measures including extrajudicial regulations remain reserved to us,- the defect of title is not based on an instruction of the orderer and - the breach of law was not caused by the orderer changing the delivery item without authority or using it in a way not specified in the contract.

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Reichelsweiherstraße 8  
95615 Marktrechwitz  
GERMANY

**Contact:**  
Tel.: +49 9231 9980-0  
Fax: +49 9231 9980-80  
kontakt@muessel.com  
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## **VII. Liability**

1. If the delivery item cannot be used by the orderer as stipulated through our fault due to suggestions and consultations made before or after the conclusion of the contract being omitted or inaccurate, or through the breach of other secondary contractual obligations - in particular instructions for the operation and maintenance of the delivery item, then the provisions of sections VI and VII.2 apply accordingly under exclusion of any further claims of the orderer.
2. For damages which have not occurred in the delivery item itself, we are responsible, on whatever legal grounds, always only
  - a) in case of intent
  - b) in case of gross negligence of organs or managerial employees,
  - c) in case of culpable injury to life, body, health,
  - d) in case of defects of the delivery item, if according to product liability law responsibility is taken for persons - or for property damage to privately used objects.

In case of culpable breaching of substantial contractual obligations, we are also liable with the gross negligence of non-managerial employees and with slight negligence, and in the latter case this is limited to reasonably foreseeable contractually typical damage. Any further claims are not possible.

## **VIII. Statute of limitations**

All claims of the orderer, on whatever legal grounds, fall under the statute of limitations in 12 months. The statutory periods apply for claims for damages according to section VII. 2.a - e. They also apply to defects in building or to delivery items that have been used according to their usual application for a building and caused defectiveness to the latter.

## **IX. Software use**

If software is contained in the scope of supply, the orderer is granted a non-exclusive right to use the supplied software including its documentation. It is left for use on the delivery item intended for it. It is forbidden to use the software on more than one system. The orderer may only reproduce, revise or translate the software or convert from the object code to a legally permissible extent (§§ 69 a ff. UrhG-German Copyright Act). The orderer commits himself not to remove manufacturer data - in particular copyright notations - or to change it without the prior express agreement of the supplier. The above also applies for the technical documentation left, including designs. All other rights on the software and the documentation including copies remain with us or with the software supplier. The awarding of sub-licences is not permitted.

## **X. Applicable law, place of jurisdiction**

1. For all legal relations between us and the orderer only the authoritative law of the Federal Republic of Germany for legal relations of domestic parties among themselves applies.
2. Place of jurisdiction is the competent court for us. The supplier is entitled however to file a suit at the head office of the orderer.

Marktredwitz, December 2015

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