Müller-BBM Industry Solutions 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 shall also apply when rendering services to the customer without reservation whilst being 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 § 14 (1) German Civil Code (BGB).

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 consultation 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 the information 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, even beyond the term of the contract or if a contract is not concluded, and not to make the information accessible to third parties.

4.2 The obligation to observe 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 observe confidentiality also does not apply when required to disclose confidential information by authorities or by law or within the context of judicial proceedings. If a party is entitled or obligated under statutory provisions or authority orders to disclose information belonging to the other party, it shall notify the affected party of the information provided in writing prior to disclosure. The requirement to provide notice of disclosure does not apply if this is prohibited by law.

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. This obligation does not apply to data made available by the client that is relevant to the outcome of the contract until the end of the liability period for defects.

5 Due Dates

5.1 Dates are only binding when agreed in writing. Partial deliveries are permitted and end the delay.

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 delay in delivery shall otherwise be determined exclusively according to clause 11.

6 Fee/Contractual exclusion 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 counterclaims insofar as his counterclaims are undisputed or have been legally established.

7 Reservation 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 any breach of contract by the client, particularly payment default, subject to prior unsuccessful reminder the client shall be obligated to return the object of the agreement.

Our accepting the return of the object of the agreement shall constitute rescission of the contract.

8 Right of use

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

9 Transfer of risk

The place of performance is the registered office of Müller-BBM.

10 Liability for defects

Contracts between Müller-BBM and the client are subject to the service contract provisions of §§ 611 et seq. German Civil Code (BGB). Insofar as our services are rendered on the basis of a specific agreement as a service under a purchase contract or a contract for work and services, the relevant provisions of the purchase contract pursuant to §§ 433 et seq. German Civil Code (BGB) or, in the case of defects in the performance under a contract for work and services, the relevant provisions pursuant to §§ 631 et seq. German Civil Code (BGB) shall apply in accordance with paragraphs 11.1 to 11.7.

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

We do not assume any guarantees, particularly not for contracted qualities.

10.2 The client's rights in respect of defects are subject to the client giving notice of the relevant defects in due time. § 377 German Commercial Code (HGB) applies accordingly.

10.3 Warranty claims for defects cannot be raised if there is only an insignificant deviation from the agreed quality.

10.4 Any claims by the client arising from measurement methods 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.

10.5 We reserve the right to determine whether to repair or replace a defective product. In the event we refuse 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 rescission of contract or a discount (corresponding reduction of 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 notice of rejection or failure of subsequent performance and after having been informed by us in advance of the right to rescind.

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

10.7 Liability for damages shall be based on clause 13.

11 Liability for defects of title

In the event of a defect of title due to the infringement of third party intellectual property rights we shall only be liable if these rights do exist in the Federal Republic of Germany, the client uses the service owed in accordance with the contract and is justifiably claimed against by the third party in this respect and the client has informed Müller-BBM immediately in writing.

We shall assume no guarantees.

12 Acceptance under a contract for work and services

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

12.2 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.

12.3 The client must claim reservations for known defects or contractual penalties within 12 business days at the latest.

12.4 The client cannot exclude fictitious acceptance according to § 640(II)(1) German Civil Code (BGB).

13 Joint and several liability

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

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

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

In this case our liability is also limited to the foreseeable typical damage.

Material contractual obligations are obligations essential for implementation of the contract and the compliance with which the client has relied on and was entitled to do so.

13.3 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.

13.4 The exclusion or limitation of our liability and the liability of our representatives or servants does not apply to liability for wrongful harm to life, bodily injury or harm to health.

We shall also be liable without limitation in the absence of qualities which have been expressly warranted in writing if the purpose of the warranty was to protect the customer against any damage which did not occur to the object of performance itself.

There shall also be no restriction in the case of strict liability, in particular in accordance with the German Product Liability Act (Produkthaftungsgesetz).

Furthermore, any liability according to the principles of recourse of the entrepreneur according to §§ 478 et seq. German Civil Code (BGB) shall remain unaffected.

13.5 Unless otherwise stipulated above, liability - irrespective of the legal cause - is excluded.

13.6 The same applies to claims arising from *culpa in contrahendo*.

13.7 In the event of reimbursement of expenses, with the exception of reimbursement of expenses pursuant to § 439 (2) German Civil Code (BGB), clauses 13.1 to 13.5 shall apply accordingly.

13.8 Any exclusion or limitation of our liability shall also apply to our legal representatives and servants.

14 Statute of limitations

14.1 The client's rights, irrespective of the legal cause, shall lapse within 12 months, unless otherwise agreed in individual contracts. This does not apply to liability for wrongful harm to life, bodily injury or harm to health.

14.2 The limitation period begins with the delivery of the subject matter of the contract, in the case of contracts for work and services with the acceptance of the service in accordance with clause 12.

14.3 The statutory periods shall apply to claims for damages pursuant to clause 13.4. The same applies to claims for defects for which the law stipulates longer limitation periods. This applies in particular to buildings as well as objects for buildings according to § 438 para. 1 no. 2 German Civil Code (BGB), furthermore to recourse claims according to § 445b German Civil Code (BGB) and claims due to construction defects according to § 634a para. 1 no. 2 German Civil Code (BGB).

15 Place of performance/Place of jurisdiction/ Applicable law

15.1 Unless otherwise stipulated in the contractual agreement, our registered office shall be the place of performance.

15.2 For contracts with merchants or legal entities under public law, the place of jurisdiction is agreed to be the registered office of our company.

Müller-BBM has the right to sue the client at his place of jurisdiction.

Legal proceedings are only to be brought before the ordinary courts of law. Arbitration agreements are therefore expressly rejected.

15.3 The contract shall be governed exclusively by German law with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

16 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.

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