

## **General Terms and Conditions of Sale of M+M Colordesign AG**

### **1. General**

- 1.1 The present General Terms and Conditions of Sale are applicable to all goods delivered and services rendered between M+M Colordesign AG (hereinafter called "M+M") and the Customer. Deviating terms and conditions of the Customer shall be binding only if M+M has recognised these expressly and in writing.
- 1.2 The present General Terms and Conditions of Sale shall be applicable even if these are not enclosed in an individual case, but have been brought to the attention of the Customer by other means.
- 1.3 Should any of the provisions contained in these General Terms and Conditions of Sale prove to be wholly or partially invalid, then M+M and the Customer shall cause any such provision to be replaced by a new provision that approximates as closely as possible to the legal and economic purpose of the original provision.
- 1.4 Offers made by M+M (in particular those made set out in price lists, brochures, the internet etc.) are non-binding.
- 1.5 All agreements and legally-significant declarations made by the contracting Parties must be made in writing in order to be valid.

### **2. Contractual conclusion**

- 2.1 The Agreement shall be concluded with the written confirmation by M+M that it accepts the order (order confirmation).
- 2.2 Deviations from the terms of the order in the order confirmation shall become part of the order insofar as the Customer does not reject these in writing within 5 working days from the receipt of the order confirmation. The rectification of mere invoice errors remains reserved.

### **3. Scope of the performances of M+M**

The performances of M+M are listed definitively in the order confirmation.

### **4. Prices**

- 4.1 Unless otherwise agreed, all prices are net, ex works, without packaging, in freely available Swiss francs, without any deductions whatsoever.
- 4.2 All ancillary costs, e.g. for freight, insurance, export, import and other permits as well as certifications shall be borne by the Customer.
- 4.3 The Customer shall moreover bear all types of taxes (in particular value added tax), duties, fees, customs charges and similar that are imposed in conjunction with the Agreement, or must reimburse these to M+M upon the rendering of corresponding proof, if M+M is made liable for these.
- 4.4 If prices change between the signing of the Agreement and the delivery as the result of circumstances that were not foreseeable (in particular currency and raw material price fluctuations or supplier prices), then M+M shall be entitled to adjust the prices accordingly.

### **5. Delivery period**

- 5.1 The delivery period specified in the order confirmation shall be applicable.

- 5.2 The delivery period shall be reasonably extended if
- 5.2.1 M+M does not in good time receive the information or the material (workpieces) that it requires for the fulfilment of the Agreement, or if the Customer retrospectively alters the information and consequently causes the delivery to be delayed;
  - 5.2.2 obstacles occur that M+M, despite exercising due diligence, is unable to circumvent, irrespective of whether these arise at M+M, at the Customer or at a third party.
- 5.3 The Customer shall not be entitled to cite a delay as grounds upon which to claim damages or further performances, insofar the delay is not attributable to an unlawful intention or gross negligence on the part of M+M. The Customer is in particular not entitled to withdraw from the agreement or to demand a price reduction.
- 5.4 If M+M does not or does not punctually perform the delivery due to events that occur at its own works or at the works of its suppliers for which it is not responsible, then it shall be entitled to withdraw wholly or in part from the Agreement without the Customer being able to claim damages on these grounds.
- 5.5 M+M is expressly entitled to perform partial deliveries.

## **6. Transfer of benefit and risk**

- 6.1 Benefits and risks shall be transferred to the Customer at the latest at the time of despatch to the Customer ex works.
- 6.2 Fulfilment of the obligations by M+M shall be established upon the dispatch of the delivery ex works and the transfer of the goods to the haulage contractor, transporter etc.
- 6.3 If the dispatch is delayed at the request of the Customer or for other reasons for which M+M is not responsible, the risk shall be transferred to the Customer at the time that was originally planned for the delivery ex works. From this time onwards the goods that are to be delivered shall be stored and insured on the account and at the risk of the Customer.

## **7. Consignment, transport and insurance**

- 7.1 Special wishes concerning dispatch, transport and insurance must be reported to M+M in good time.
- 7.2 Complaints relating to dispatch or transport must be reported by the Customer upon receipt of the goods or freight documents to the final haulage contractor without delay.
- 7.3 The Customer shall be responsible for ensuring the goods against damage of any possible kind

## **8. Examination and acceptance of the delivered goods**

- 8.1 The Customer must check the deliveries within 3 working days following receipt, and must report any possible defects to M+M in writing within this deadline. Once this deadline has passed, the goods shall be deemed to have been accepted.
- 8.2 M+M must rectify the defects reported to it pursuant to Fig. 8.1 as quickly as possible, or – at its choice – to exchange the goods for defect-free goods.
- 8.3 The Client shall not have any rights or claims on the grounds of defects of any nature whatsoever in the deliveries, with the exception of those expressly named in Fig. 8 and 9.

## **9. Liability**

- 9.1 M+M shall be liable exclusively for defects and damage that are attributable to unlawful intent or gross negligence on the part of M+M. Any further warranty and liability shall be expressly excluded.

M+M shall in particular not be liable for defects and damage attributable to imprecise information provided by the Customer or caused by natural wear, defective maintenance, improper processing and utilisation, excessive use or other reasons for which M+M is not responsible.

- 9.2 The warranty period (guarantee period) is 12 months. It shall begin at the time of the dispatch of the delivery ex works. The warranty period for replaced or repaired goods shall start anew and shall once again be 12 months from the date of the dispatch of the replacement goods by M+M.

The warranty shall expire prematurely if the Customer or third party performs improper alterations or repairs, or if the Customer, should a defect appear, does not promptly give M+M the opportunity to rectify the defect.

- 9.3 If the workpieces that are to be treated by M+M are delivered by the Customer or by a third party commissioned by the Customer, then the warranty granted by M+M shall be limited to the contractually-compliant rendering of its performance. The performance shall be deemed to have been rendered in a contractually compliant manner if the result corresponds to the sample approved by the Customer. If there is a deviation, then M+M shall be liable only if the deviation is attributable to the fact that M+M rendered its performance in a grossly negligent manner or with unlawful intent other than as was associated with the creation of the sample, without this having been demanded or approved by the Customer.

- 9.4 If the workpieces that are to be treated by M+M were designed by the Customer or by a third party commissioned by the Customer, and if they were manufactured on the basis of the instructions and on behalf of the Customer by M+M or by a third party commissioned by it, then the associated warranty of M+M shall be limited to the utilisation of the agreed material and the execution of the manufacture in accordance with the instructions. In respect of the further treatment of these workpieces, Fig. 9.3 is applicable.

- 9.5 Utilisation of the workpieces treated by M+M as end products or as components of end products is solely the responsibility of the Customer, irrespective of whether the workpieces were delivered by the Customer (Fig. 9.3) or were manufactured by M+M (Fig. 9.4).

If claims for damages are brought by third parties against M+M on the grounds of product faults that resulted from performances rendered by the Customer or from improper utilisation as end products or parts of end products, then the Customer must compensate M+M for all costs incurred in this conjunction.

- 9.6 If the liability criteria pursuant to Fig. 9.1 are fulfilled, then the Customer shall be entitled exclusively to the replacement or repair of the faulty goods (cf. Fig. 8.2). In particular, the Customer shall not be entitled to withdraw from the Agreement or to demand a price reduction or to make further claims for compensation.

If the workpieces delivered by the Customer or by a third party commissioned by him can no longer be used, then the Customer shall be entitled to no more than the reimbursement of their material value (current value), insofar as the damage is attributable to at the least grossly negligent fault of M+M. The same also applies in the event of the loss of the workpieces.

9.7 Irrespective of the above provisions, and insofar as this is permitted by law, the liability of M+M shall not exceed the price that the Customer would have owed in overall terms for the performances of M+M on the basis of the specific contractual relationship.

**10. Terms and conditions of payment**

10.1 The payments must be performed by the Customer, unless otherwise agreed, within 30 days net, plus value added tax.

10.2 If the rights of M+M are in jeopardy because the Customer has become insolvent, then M+M may suspend the execution of the order until the Customer fulfils the contractually agreed obligations. M+M may withdraw from the Agreement if fulfilment thereof is not ensured within a reasonable period.

**11. Place of jurisdiction and applicable law**

11.1 The present Agreement is governed by Swiss law, whereby the UN Sales Convention shall be excluded.

11.2 The exclusive place of jurisdiction for all legal disputes arising between the contracting Parties is Grenchen, Switzerland.

Issued May 2008