

General Sales and Delivery Terms of **Akkumulatorenfabrik MOLL GmbH + Co. KG,** **Bad Staffelstein**

Version 02 November 2016



I. General terms and conditions

1. These General terms and conditions (AGB) refer to all deliveries and services (hereinafter referred to as deliveries) of Akkumulatorenfabrik MOLL GmbH + Co. KG, Angerstr. 50, 96231 Bad Staffelstein (in the following: Supplier). The written confirmation of the order by the Supplier is solely valid with regard to the scope of deliveries. The General terms and conditions of the ordering party shall only apply if the Supplier has expressly agreed thereto in writing. In any case of doubt, the German version of our General terms and conditions (AGBs) shall apply.

2. The Supplier shall reserve the usage right in terms of ownership and copyright in the cost estimates, drawings and other documents (hereinafter referred to as: documents). The documents may only be made accessible to any third party after obtaining the Supplier's approval in advance and shall be returned without undue delay to the Supplier by the Supplier's special request if the contract is not awarded. The same shall apply to documents of the ordering party, however, the Supplier shall be authorised to make such available to a third party to whom he has permissibly awarded deliveries.

3. The ordering party shall not possess the exclusive right to utilise the Supplier's standard software with the agreed performance characteristics in an unmodified form on the agreed equipment. The ordering party is authorised to produce a back-up copy without any explicit agreement. Originals and copies shall be returned at the end of the cooperation.

4. Partial deliveries shall be permissible, if such are deemed reasonable on the part of the ordering party.

5. In so far as besides delivery also assembly is agreed upon, this shall represent a dependent ancillary service within the scope of the purchase contract.

II. Prices and payment terms

1. The prices are understood ex works excluding packaging and including the respectively applicable statutory Value Added Tax.

2. If the Supplier has contractually taken over assembly, the ordering party shall assume any and all ancillary costs, such as travel expenses, costs for transporting the tools and personal luggage as well as accommodation allowances.

3. Payments shall be made without any deductions and free of transaction charges to the Supplier's designated account(s).

4. The ordering party shall only be entitled to offset with such counterclaims which are undisputed or deemed to be final and conclusive.

5. a) The Supplier shall be entitled to assign his claims against the ordering party to any third party within the scope of a factoring contract.

b) If the ordering party defaults in payment with a payment request, the Supplier shall be entitled to accelerate maturity within regard to all remaining unsettled claims against the ordering party.

c) In the case of a successfully enforced prosecution of the Supplier's claims the ordering party shall assume any and all charges, fees, costs and expenses of the Supplier which accrue in or beyond the territory of Germany.

III. Retention of title

1. The objects of delivery shall remain the property of the Supplier until any and all claims to which it is entitled vis-à-vis the ordering party from the complete business relationship have been settled. In so far as the value of all security interests to which the Supplier is entitled, exceeds the account of all secured claims by more than 20%, the Supplier shall release an appropriate portion of the secured claims upon the request of the ordering party.

2. During the period of title retention the ordering party shall not be entitled to pledge or assign as security and further sale shall only be permitted to resellers in the normal course of business and only under the condition that the reseller has also agreed on a retention of title with its customer(s).

3. In the case of hypothecation, seizure or any other dispositions or third-party intervention, the ordering party shall inform the Supplier thereof without undue delay.

4. In the event of breaches of duty on the part of the ordering party, in particular in the case of default in payment, the Supplier shall be entitled to rescind and unwind the agreement, in particular following a fruitless expiry of a time limit granted to the ordering party; the statutory terms on dispensability of granting a period of grace shall not be affected thereby.

5. As a precautionary measure the ordering party herewith assigns its claims from the contract with its customer to the Supplier. It is obliged to book payments received from the customer separately and to archive such accordingly.

IV. Deadlines for deliveries; default

1. The compliance with agreed delivery deadlines requires a timely receipt of all documents, neces-

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sary approvals and releases, in particular of plans, as well as fulfilment of all other obligations by the ordering party. Otherwise the deadlines will be extended appropriately, unless the Supplier is able to justify the delay.

2. If noncompliance with the deadlines results from an Act of God, e.g. mobilisation, war, upheaval or similar events, e.g. strike or lockout, the deadlines shall be extended accordingly.

3. If the Supplier defaults, the ordering party shall be entitled to a compensation – in so far as it is able to prove that it has suffered damage therefrom – which shall be exclusively limited to 0.5% for each completed week of default, in total, however, to maximally 5% of the price for the part of deliveries which defaulted.

4. Further damage claims on the part of the ordering party beyond the amount agreed upon in Clause 3 shall be excluded irrespective of the reason in all cases of delayed delivery, also after expiry of a deadline granted by the Supplier for delivery. This shall not apply in so far in cases of intent, gross negligence or in cases of mandatory liability on the grounds of death, injury to body or health. The ordering party can only rescind the contract within the statutory regulations in so far as the delay has to be justified by the Supplier.

5. If the ordering party desires to rescind the contract on the grounds of a delay in delivery or to insist upon delivery, it shall declare its intention within an appropriate period.

6. If shipment or delivery are delayed at the request of the ordering party by more than one month after notification that the goods are ready for dispatch, a storage fee corresponding to 0.5% of the price of the goods to be delivered, at most, however, 5% in total can be charged to the ordering party. It shall be left up to the contracting parties to document proof of higher or lower storage costs.

V. Transfer of risk

1. The risk shall pass on to the ordering party as follows even in the event of a carriage free delivery:

a) in the event of deliveries without installation or assembly, if these are shipped by the Supplier or picked up by the ordering party. By request and at the expense of the ordering party the deliveries are insured by the Supplier against the customary transport risks;

b) in the event of deliveries with installation or delivery on the date of acceptance at the own company, or if agreed upon in writing, after an error-free trial operation.

2. If the shipment, commencement, execution of the installation or assembly at the company of the ordering party or the trial operation is delayed for reasons which have to be justified by the ordering party, or if the ordering party defaults in accepting the goods for any other reasons, the risk shall pass on to the ordering party.

VI. Installation and assembly

In so far as in addition to purchase an agreement was made regarding installation and assembly, and if no other terms were agreed upon in writing, the following conditions shall apply:

1. The ordering party shall take over and ensure the following at its own expense:

a) all earthwork, building and other extra work from other sectors, including the skilled workers, non-skilled workers, building materials and tools,

b) all articles and materials, such as scaffolding, hoisting equipment and other fixtures, combustibles and lubricants required for assembly and initialisation,

c) energy and water at the application site, including connections, heating and lighting,

d) at the assembly site for storage of the machine parts, apparatuses, materials, tools etc. suitable, dry and lockable rooms of sufficient size and appropriate working and recreation rooms for the assembly staff, as well as appropriate sanitary facilities; for the rest the ordering party shall take appropriate measures to protect the property of the supplier and assembly staff on the construction site which it would otherwise take to protect its own property,

e) protective clothing and protective facilities which are required at the construction site resulting from the special circumstances prevailing at the assembly location.

2. Prior to beginning assembly work the ordering party shall provide the necessary information on the location of hidden electricity cables, gas and water pipes or on similar facilities as well as the necessary static specifications without being requested to submit such information.

3. Prior to beginning installation or assembly work the necessary provisions and objects must be at the installation or assembly site and all preliminary work must have been completed so that the installation and assembly can be commenced as agreed and executed without interruption. Access paths and the installation or assembly site must be levelled out, accessible and cleared.

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4. If installation, assembly or initialisation are delayed by circumstances which the Supplier does not have to justify, the ordering party shall bear the costs for standby time and additionally required travels of the Supplier or of the assembly staff in an appropriate scope.

5. The ordering party shall conform vis-à-vis the Supplier at weekly intervals the duration of working time of the assembly staff as well as the end of installation, assembly or initialisation without undue delay.

6. If the Supplier demands acceptance of the delivery upon completion, the ordering party shall accept the delivery within two weeks. If this does not take place, the delivery shall be deemed to have been accepted. The delivery is furthermore deemed to have been accepted if the goods delivered have been put to use – if applicable after expiry of an agreed test phase.

VII. Acceptance

The ordering party may not reject acceptance of deliveries on the grounds of insignificant defects.

VIII. Material defects

For material defects the following is agreed upon (the Supplier warrants as follows):

1. The ordering party shall immediately inspect each delivery and shall notify the Supplier of any material defects in writing without undue delay.

2. The ordering party shall give the Supplier the opportunity to inspect a delivered object with regard to the existence of defects immediately. In the event of proven material defects the Supplier shall be initially granted the opportunity to remedy the defect within an appropriate period of time.

3. Claims with regard to material defects become time-barred after 12 months. This does not apply in so far as the Supplier has fraudulently concealed a defect or has submitted a written guarantee bond, or in the case of damages arising out of death, injury to body or health, in the case of an intentional or gross negligent breach of duty on the part of the Supplier.

4. Within the period of limitation – irrespective of the period of operation – the Supplier is entitled to remedy faulty parts or services, deliver new parts or render new services at its discretion regardless of the period of operation, in so far as the cause of the defect was already given at the point of transfer of risk.

5. If supplementary performance fails, the ordering party can rescind the contract or reduce remunera-

tion – irrespective of further damage claims pursuant to Art. XI.

6. In the case of a notice of defect payments of the ordering party may only be withheld in a scope which is deemed to be in an appropriate relationship to the value of the asserted material defects. The ordering party can only withhold payments if a notice of defects the justification of which is not doubted is enforced. If the notice of defects is not justified, the Supplier shall be entitled to demand replacement of the expenses incurred on its part from the ordering party.

7. Claims shall be excluded in the event of only marginal deviations from the agreed properties, or in the event of an only insignificant impairment of use, in the event of natural wear and tear or damage arising after a transfer of risk as a result of faulty or negligent treatment, excessive use, unsuitable operating means, faulty construction work, an unsuitable building area or on the grounds of external influences which are not presumed pursuant to the contract as well as in the event of non-reproducible software defects. If changes or repairs are made by the ordering party or by a third party without obtaining the Supplier's written approval in advance, no claims based on defects shall exist for these as well as for the consequences resulting therefrom.

8. Claims of the ordering party on the grounds of the necessary expenses for the purpose of supplementary performance, in particular, transport, infrastructure costs, labour and material costs shall be excluded, in so far as the expenses increase as a result of the fact because the subject of delivery has been transported to another location than that of the branch office of the ordering party, unless the shipment corresponds to its normal use.

9. Rights of recourse of the ordering party against the supplier pursuant to Section 478 BGB (Recourse of the entrepreneur) shall in so far only exist if the ordering party has not made any agreements with its customers going beyond the statutory claims based on defects. For the scope of right of recourse of the ordering party vis-à-vis the Supplier pursuant to Section 478 par. 2 BGB No. 8 shall furthermore apply accordingly.

10. For damage claims Art. XI (Other damage claims) shall for the rest apply. Further or other claims of the ordering party other than those set forth in this Art. VIII of the ordering party against the Supplier and its vicarious agents on the grounds of a material defect shall be excluded.

IX. Intellectual property rights and copyrights; legal defects

1. Unless no other agreement is made in writing the Supplier is obliged to provide the delivery only in the

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country of the place of delivery free of industrial property rights and copyrights (hereinafter referred to as industrial property rights of a third party. In so far as a third party raises justified claims against the ordering party on the grounds of a violation of industrial property rights by a third party on the grounds of rendered and contractually used deliveries the Supplier shall warrant vis-à-vis the ordering party with regard to the deadline set forth in Art. VIII No. 2 as follows:

- a) The Supplier shall either obtain a right of use at its discretion and at its expense for the respective deliveries and modify the deliveries to such an extent so that the industrial property right is no longer violated or shall replace it. If this is not possible on the part of the Supplier under reasonable conditions, the ordering party shall be entitled to the statutory rights to withdraw from the contract or reduce the price.
 - b) The Supplier's obligation to pay damages shall be based on Art. XI.
 - c) The aforementioned obligations of the Supplier shall only exist in so far as the ordering party immediately informs the Supplier of any and all claims enforced by a third party in writing without undue delay, a violation is not acknowledged and all defence measures and compromise settlement negotiations are subject to the Supplier. If the ordering party discontinues the use of for reasons of mitigation of damages or other significant reasons, it shall be obliged to inform the third party that no acknowledgement of infringing intellectual property rights is associated with the discontinued use.
2. Claims of the ordering party shall be excluded in so far as it has to justify the violation of the intellectual property rights.
3. Claims of the ordering party shall be furthermore excluded in so far as the violation of the intellectual property right is caused by special requirements of the ordering party, by an application which was not foreseeable by the Supplier or by caused by the delivery being modified by the ordering party or being used in combination with products which were not delivered by the Supplier.
4. In the event of violations of industrial property rights the terms of Art. VIII No. 4, 5 and 9 shall apply accordingly for the claims settled in No. 1 a) of the ordering party.
5. If any further legal deficits are given, the terms set forth in Art. VII shall apply accordingly.

6. Further or other claims of the ordering party other than those settled in this Art. IX against the Supplier and its vicarious agent(s) shall be excluded on the grounds of a material defect.

X. Impossibility of performance; contract adaptation

1. If the delivery is impossible the ordering party is entitled to demand damages, unless the Supplier does not have to justify the impossibility of performance. The claim for damages shall, however, be limited to 10% of the value of the part of the delivery which cannot be put into operation for the purpose intended on the grounds of impossibility of performance. This limitation shall not apply unless liability is mandatory in cases of intent, gross negligence, or damages arising out of death, injury to body or health; a change in terms of burden of proof to the disadvantage of the ordering party shall not be associated herewith.

The right of the ordering party to rescind the contract shall remain unaffected, if

2. unforeseeable events within the sense of Art. IV No. 2 substantially modify the economic significance or the contents of the delivery in a substantial respect or take a substantial effect on the business of the Supplier. In such a case the contract shall be appropriately adapted in good faith. In so far as such is not justifiable in an economic respect, the Supplier shall be entitled to the right to rescind the contract. If the Supplier desires to use this right to rescind the contract, it shall immediately inform the ordering party thereof without undue delay in awareness of the consequences of the event, and even if an extension of the delivery period had initially been agreed upon with the ordering party.

XI. Other damage claims

1. Damage and compensation claims of the ordering party (in the following: damage claims), irrespective of the legal ground, in particular on the grounds of infringing obligations from the contractual obligation and from an unlawful act, shall be deemed to be excluded. The damage claim for the infringement of material contractual obligations shall, however, be limited to the foreseeable damage being typical of the contract.

2. This shall not apply in so far as a mandatory warranty is assumed e.g. pursuant to the Product Liability Act (*Produkthaftungsgesetz*), in cases of intent, gross negligence, or of damages arising out of death, injury to body or health, or on the grounds of a violation of material contractual obligations.

3. If the ordering party is entitled to damage claims pursuant to this Art. XI, these shall be deemed to be time barred with the end of the limitation period

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applying to claims for material defects pursuant to Art. VIII No. 2. In the case of damage claims pursuant to the Product Liability Act the statutory statutes of limitation shall apply.

XII. Place of jurisdiction and applicable law

1. Sole place of jurisdiction, if the ordering party is a merchant, in any and all disputes resulting directly or indirectly from the contractual relationship shall be the registered offices of the Supplier. The Supplier is, however, also authorised to take action at the seat of the ordering party.

2. The laws of the Federal Republic of Germany shall apply to any and all legal issues or legal disputes resulting from this contractual relationship, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.21980 (CISG).

XIII. Escape clause

If any one or more of the terms set forth in the agreement and/or Terms and Conditions of Purchase are invalid for any reason, this shall not affect the validity of the remaining terms for the rest. The contracting parties shall moreover in such a case be obliged to replace the invalid clause by a legally permissible clause approximating the desired purpose of the contract in the best possible way.