

Terms and Conditions of Sale, Delivery and Licensing of Müller-BBM Rail Technologies GmbH

1 Terms of sale and delivery

1.1 Applicability of the terms

The following terms apply for the sale and delivery of measurement and monitoring systems ("Products"). They also apply for the individual components of the Products such as Hardware or Software. Acceptance of delivery shall be deemed acceptance of these terms.

1.2 Offers, conclusion of a contract, content of a contract

Offers made by Müller-BBM Rail shall be non-binding. A contract is only concluded when the ordering party ("Customer") receives a written order confirmation from Müller-BBM Rail. The order confirmation issued by Müller-BBM Rail shall be decisive for the agreed upon deliverables.

1.3 Payment terms

35% of the order value shall be paid after written receipt of the order, 65% of the order value after delivery or commissioning.

We ask that payment be made in full within 14 days of receipt of the invoice.

1.4 Reservation of title

We reserve title and copyright with regard to all documents provided by us in the context of our quotation such as offers, descriptions and drawings.

Müller-BBM Rail shall retain title in all products delivered by it until all current or future claims to which Müller-BBM Rail is entitled under the business relationship with the Customer are settled.

1.5 Delivery dates, partial deliveries

Delivery dates shall only be binding if they have been agreed in writing.

Müller-BBM Rail shall endeavour to meet the agreed delivery dates. Should this not be possible, the Customer shall only be entitled to withdraw from the contract if it first grants Müller-BBM Rail a reasonable grace period, threatening to refuse acceptance of performance after such grace period expires fruitlessly, and after such grace period has expired. Delayed deliveries shall not give rise to any claims for damages, unless Müller-BBM Rail is culpable of intentional misconduct or gross negligence.

1.6 Shipping, packaging, assembly

The Customer shall inform Müller-BBM Rail of any transport damage without undue delay and procure and submit evidence to establish such damage.

The Customer shall observe all import and customs regulations known to it, and it shall be responsible itself for complying with the legal provisions relating to import and customs clearance.

Delivery shall be CIP (Incoterms 2010) at the agreed place of destination.

2 Warranty

Müller-BBM Rail warrants (in accordance with the provisions of sections 434 et seqq. German Civil Code (BGB)) that the Products conform with the specifications indicated by Müller-BBM Rail in the associated documentation, and that they have been produced with the required care and expertise. Given the current state of the art, it is however not possible to completely exclude the possibility of Product defects.

The Customer shall provide written notification of any evident defects in the delivered Products without undue delay, and no later than within 8 days after receiving the goods or commissioning the system.

Müller-BBM Rail shall correct any Product defects which materially affect their contractual use. Müller-BBM Rail may, at its discretion and depending on the severity of the defect, correct such defect by delivering an improved version, by delivering spare parts, by repair or by providing information on how to eliminate or work around the effects of the defect. The Customer shall be obligated to accept a new version offered by Müller-BBM Rail as a way to correct the defect, unless this would give rise to problems with regard to adoption or adjustment which are not reasonably acceptable to the Customer.

If the correction of the defect fails, the Customer shall be entitled to withdraw from the contract free of charge or to demand a reduction of the purchase price. In the event of a withdrawal from the contract, the Customer shall return the relevant Products with the data carriers of the Software as well as the related documentation to Müller-BBM Rail; the Customer shall also destroy any copies. Replaced parts shall become the property of Müller-BBM Rail.

Any and all warranty claims of the Customer shall be excluded in case of any interference with, modifications of, or other work on the Product (or parts thereof) by the Customer or any third party on its behalf. The same shall apply if a failure on the part of the Customer to comply with the operating manual causes malfunctions.

The warranty period is 12 months from delivery of the Product. In the case of partial deliveries, the warranty period shall run from the end of the day on which the last partial delivery is delivered.

3 Liability

Müller-BBM Rail shall be liable for damage caused by the absence of characteristics guaranteed by it, as well as for any damage caused by Müller-BBM Rail through gross negligence or intent.

Müller-BBM Rail shall not be liable for damage caused through slight negligence. However, Müller-BBM Rail shall be liable for slight negligence breaches of essential contractual obligations due to direct damage to property and direct financial losses; such liability shall be limited to an amount equal to double the Product price paid by the Customer. Damages for injury to life, body or health shall be limited to € 1.5 million. These amounts are covered by our professional liability insurance.

Müller-BBM Rail shall not be liable for indirect and consequential damage caused by negligence (this concerns in particular lost profits and loss of production). In other regards, payment of damages shall be limited to no more than € 1 million.

For other (uninsurable) damage, our liability shall be capped at the amount of the purchase price.

If liability claims are asserted against us, we shall be entitled to undertake the remediation of the damage.

Müller-BBM Rail shall not be liable for the recovery of data, unless Müller-BBM Rail has caused the loss of such data by gross negligence or intent, and the Customer has ensured that such data can be reconstructed with reasonable effort from data resources provided in a machine-readable format.

The Customer understands that it is required, in its own interest, to minimise potential losses and that this includes the requirement to back up its data in regular intervals, and, in the event of a suspected Software error, to take all reasonable additional security measures.

4 Licence terms relating to the licensing of Software of Müller-BBM Rail – rights of use

4.1 General rights of use

By purchasing Software licenses, the Customer acquires (for a fee) a non-exclusive right (licence) to use the purchased Software provided by Müller-BBM Rail, unlimited in time.

The licence grants the Customer use of the Software within the bounds of normal use. This includes installing the Software, loading the Software into the main memory, and operating the software.

Upon violation of these terms, the right of use shall be cancelled automatically.

The licence does not cover any other types of use. The Customer is in particular not allowed to modify, translate or reproduce the Software (not even in part or temporarily), regardless of how and by what means this is accomplished. Printing the program code is also considered illegal reproduction.

The Customer shall not reverse-engineer or decompile the Software, nor shall it remove individual program parts. In other regards, sections 69d, 69e German Copyright Act (UrhG) shall remain unaffected.

Should Müller-BBM Rail initiate termination of the usage right for a justified reason, the Software and any copies that have been made must be deleted, and the relevant documentation destroyed.

The source code will not be provided as part of the delivery.

Software from Müller-BBM Rail may contain third-party software. The license rights of these third-party companies shall continue to be in force under these licensing terms.

4.2 Single-user licence

Depending on the Product, the single-user licence is permanently assigned to a workstation or protected by a dongle. In the first case, the Customer may use the Software on the permanently assigned workstation, otherwise by connecting the dongle.

For permanently assigned workstations, the customer may switch to a new workstation if for example the existing workstation is replaced with a new workstation. In order to use the provided Software simultaneously on an additional workstation, an additional licence fee shall be paid.

The single-user licence is the default case, and applies in all cases where the offer does not expressly indicate one of the other scenarios.

4.3 Flow licence

In conjunction with a network server, the flow licence enables the use of a licence within a network from different workstations.

The simultaneous use from several workstations requires a corresponding number of flow licences.

5 Copyright

Müller-BBM Rail holds all industrial property rights and copyrights in the Products and the associated user documentation as well as all other rights to the Software going beyond the licence. These rights shall not be transferred in whole or in part under these terms. References to copyright or other industrial property rights which are located on or in the Products may not be changed, removed, or otherwise made unrecognisable.

6 Confidentiality agreement

Müller-BBM Rail and the Customer undertake to maintain strict secrecy with respect to the trade secrets of the respective other party, not to disclose them to third parties, to use them exclusively for the purposes specified in this offer and to take all appropriate precautions to ensure secrecy. Müller-BBM Rail and the Customer shall ensure that their personnel complies with these obligations.

This shall also apply for the offer or parts of the offer of Müller-BBM Rail Technologies.

The contracting parties undertake to treat all information and documents provided to them by the other party as strictly confidential and not to make them accessible to any third party; this shall also apply beyond the term of the contract or if the contract has not been concluded.

Unless otherwise agreed, documents may also be sent by email.

7 Software maintenance, Hardware maintenance and calibration, service and support

The maintenance of the Software, the maintenance of the Hardware and the calibration of the Products as well as service and support are exclusively subject to the provisions of a separate maintenance contract ("Maintenance Contract").

8 Resale

The Customer may, with the prior written consent of Müller-BBM Rail, sell the Products, including the user manual and other accompanying material, to third parties on a permanent basis. As a further precondition for this, the acquiring third party must agree in writing to the continued validity of these Terms and Conditions of Sale, Delivery and Licence and that such terms also apply to the acquiring third party. The Customer must notify Müller-BBM Rail in writing of the completion of the resale, with the confirmation of the acquisition regarding the continued validity of the licence terms. In the event of the transfer, the Customer must hand over to the new licensee all program copies to which the respective licence applies, including any existing backup copies, or destroy the copies that have not been transferred. As a result of the transfer, the Customer's right to use the program shall expire.

The Customer may transfer the Products, including the user manual and other accompanying material to third parties for a limited period of time, provided that this is not done by way of renting for commercial purposes or leasing, that the third party agrees in writing to the continued validity of these licence terms and that such licence terms also apply to such third party, and that the transferring licensee transfers all copies of the program, including any existing backup copies, or destroys the copies that have not been transferred.

For the time period in which the Software is transferred to the third party, the transferring licensee shall not be entitled to use the program for its own purposes. Third parties within the meaning of this paragraph shall only be companies with which the licensee is affiliated within the meaning of section 15 German Stock Corporation Act (AktG). The transferring licensee shall make arrangements ensuring that the transfer ends, should the corporate affiliation end on its part.

9 Obligations of the customer to cooperate and to provide information

Before use, the Customer shall thoroughly test Software provided by Müller-BBM Rail to ensure that it is usable and free from defects.

The Customer shall take appropriate precautions for the eventuality that the Software does not work properly in whole or in part (for example through data backup, fault diagnosis, regular checking of data-processing results).

The Customer and its employees shall take adequate security measures to prevent abuse, and shall treat the Software with the same care they apply for their own confidential data and information.

The Customer shall bear any disadvantages and additional costs resulting from a breach of these obligations.

10 Limitation of actions

Claims of the Customer shall expire after five years.

11 Place of jurisdiction

The place of jurisdiction for all disputes under this contract shall be Munich.

12 Final provisions

Subsidiary agreements, amendments and supplements hereto shall only be valid if they are agreed in writing upon conclusion of the contract and are expressly designated as such. German law shall apply. The sole place of jurisdiction is Munich.

Should one or more provisions of these terms and conditions of offer be or become invalid, the other provisions shall remain unaffected. In such a case, the parties shall replace the invalid provision with a valid provision that comes as close as possible to the economic purpose intended by the invalid provision. The same shall apply to any omissions.