

## Terms of Purchasing

### I. Scope

Our Terms of Purchasing apply exclusively and for all future legal relationships with the Supplier. Terms of the Supplier that are contrary to our terms shall not be acknowledged, including where we fail to contradict these. This also applies for commercial letters of confirmation, where these refer to deviating general terms and conditions.

### II. Conclusion of contract

- (1) Our order is only binding and valid in written form.
- (2) Our order is deemed to be validly accepted where it is not contradicted by the Supplier within 5 working days of receipt of order. A written/electronic order confirmation shall have been received by us within 10 working days of receipt of order.
- (3) Should the Supplier wish to deviate in his acceptance from the order, then he shall refer to each individual deviation in written form, within the period of receipt. His deviating confirmation shall be deemed to be a new offer. If, subsequently, we should fail to contradict this within a period of receipt of 5 days, then the contract shall come into effect with the content of the deviating declaration.

### III. Order, supplier and article numbers

- (1) Correspondence associated with an order shall only be conducted with the responsible purchasing department, with statement of order number and any other necessary identification. The following are to be stated in all confirmations, invoices, delivery notes and other correspondence:
  - a. the complete order number
  - b. the part number of the manufacturer
  - c. the Micro – Hybrid article number
- (2) Invoices of the Supplier that fail to comply with the conditions of paragraph (1) shall be deemed not to have been issued. The invoice shall only be deemed to have been issued where the Supplier has subsequently fulfilled all of the requirements. The Ordering Party is only required to inform the Supplier of the need for subsequent fulfilment one time.

### IV. Prices and terms of payment

- (1) The price indicated in the order is binding.
- (2) Unless otherwise agreed in written form, all other costs, such as those of packaging, shipping and insurance, are included in the indicated price. Our prices do not include statutory value-added tax.
- (3) Unless otherwise agreed, Supplier invoices shall be settled by us, on the respective 15th day of the month following the invoice date, with deduction of 3 % early payment discount, or 90 days after invoicing net.
- (4) Payment does not constitute acknowledgment that the goods are free from defects.

### V. Delivery date and place of performance; default of delivery

- (1) The delivery date stated in the order is a binding date of arrival at the stated receiving centre (place of performance).
- (2) Should the Supplier realise prior to the delivery date that the delivery date is unable to be met, then he shall inform us of this in written form without delay, stating the duration and reason for the delay. He is obliged to provide us with alternative solutions concerning how delivery of the contractual goods or similar goods can be achieved and secured at competitive prices and where possible unaltered specifications. Claims from default of delivery are not affected by this.
- (3) Where the Supplier is obliged to provide material tests, inspection sheets, quality documents or other documents, the completeness of the delivery and performance shall also be dependent upon receipt of these documents.
- (4) The Supplier shall enter into delivery default where he fails to hand over the ordered goods on the stated delivery date at the receiving centre as agreed, unless the Supplier can prove that he is not responsible for the default. His responsibility is regulated pursuant to § 276 and § 287 German Civil Code. Should the Supplier be in default, at our choice we may demand compensation instead of performance, default compensation or restitution of wasted expenditure, withdraw from the contract or reduce the purchase price. Our performance interest is dependent upon the absolute observance of the agreed delivery dates. For this reason, in the event of delivery default we may withdraw from the contract even without the granting of additional respite. In addition, the statutory terms also apply.
- (5) Acceptance of a delayed delivery does not constitute waiver of claims for delivery default.
- (6) In the event of force majeure, natural disasters, war or civil unrest, official measures, transport disruption, strikes, lock-outs or other grievous operational disruption in our field or the field of the Supplier, the contractual partners shall be released from their contractual obligations for the duration and to the extent of the disruption. Claims for compensation of both parties are excluded. The parties shall inform one another promptly and extensively of the circumstances and adapt their obligations in good faith, to the extent that this is possible and reasonable.

### VI. Delivery and transfer of risk

1. Short deliveries are permissible, to the extent that these are reasonable for the Ordering Party.

### VII. Acceptance of delivery

- (1) The goods shall be free of defects of quality or title, i.e. they shall correspond in particular to the agreed terms and the samples released by us. The Supplier assumes the guarantee that the goods possess the agreed qualities. If this is not the case, then we may refuse acceptance of the delivery and return the goods to the Supplier at his expense and risk. This does not affect claims under guarantee.
- (2) The acceptance of a delivery does not constitute acknowledgment of freedom from defect.
- (3) Should we be prevented from accepting goods as a consequence of the reasons stated in point 5.6 clause 1 or are only in the position to accept the goods under unreasonable conditions, then the Supplier shall store the goods in an orderly manner at his expense, to the extent that we have agreed later acceptance with the Supplier pursuant to point 5.6 clause 1 and 3.

## VIII. Notice of defect

- (1) Unless otherwise agreed in written form in individual cases, the terms of the following paragraphs shall apply.
- (2) We are obliged to examine the goods for identity, quantity and externally-visible damage (transport and storage damage) within a reasonable period. A sampling procedure shall be implemented for this purpose. This procedure shall be agreed on an individual basis or specified by us according to our best judgement. The terms of §§ 377 and 378 German Commercial Code are ceded.
- (3) Should a defect in the goods only become apparent later, then the objection shall be deemed to have been raised in a timely manner where it is communicated to the Supplier within a period of 5 working days. The period commences one working day after discovery of the defect.
- (4) We are bound to no formality requirements for the examination of the delivered goods, nor for notification of apparent or hidden defects.

## IX. Bad delivery and guarantee

- (1) The guarantee is based upon the statutory terms, to the extent that these terms do not state otherwise.
- (2) A material defect exists where the goods do not fulfil the agreed quality at the point of transfer of risk (pursuant to the terms of § 434 German Civil Code). In particular, the Supplier also guarantees that his goods are state-of-the-art and comply with all binding legal terms, regulations, ordinances and guidelines. The Supplier shall refrain from issuing guarantees regarding qualities to third parties, for example in the form of advertising, that he does not also guarantee to us.
- (3) Should we, in turn, be subject to a claim from third parties as a result of defective products of the Supplier, we may hold the Supplier liable. This applies in particular to recourse of the businessman under the terms of consumer goods purchase (§ 478 German Civil Code).
- (4) In the case of defect we may choose either rectification of the defect or delivery of goods free from defect. The Supplier shall bear the additional expense incurred for supplementary performance. Where statutory requirements exist, we have the right to reduce the purchase price or withdraw from the contract, as well as to demand compensation or reimbursement of wasted expenditure. Compensation in this case also includes the costs incurred in the inspection and removal of defective goods. Should we only notice the defect during processing or putting the goods to use, we may demand reimbursement of the costs incurred to that point from the Supplier. Moreover, compensation shall also include the claims made against us by third parties.
- (5) With regard to loss prevention measures (e.g. recall etc.) the Supplier shall be liable where legally obliged to be so. We ourselves may undertake all necessary measures to prevent loss for the Supplier at his expense, where during the guarantee period or a period of 2 years following the end of the guarantee period defects of a similar nature occur on a regular basis that may result in risk to life and limb or other significant loss, including financial loss, to third parties. We are obliged to inform the Supplier of this without delay. Both parties commit themselves to finding a mutual solution to rectify the risk emanating from the defective contractual goods as economically and quickly as possible. The liability of the Supplier under product liability law and under the contractual term pursuant to point 10 remains unaffected.
- (6) Unless otherwise agreed on an individual basis, the guarantee period consists of 24 months from transfer of risk. In the case of replacement delivery or rectification of defect the period recommences with the transfer of risk of the replacement goods or completed rectification of defect in the old goods. We may receive the defence of defect via notification of defect.

## X. Product liability

- (1) Should we be subjected to claims for breach of statutory safety regulations or due to domestic or foreign product liability terms as a consequence of the defectiveness of our product arising from a product of our Supplier, we shall be entitled to demand compensation for this loss from the Supplier to the extent that the loss has been caused by his defective products. Should the loss be due wholly to the defective product of the Supplier, then we may demand release from liability for damages from the Supplier in the event of third party claims. In both cases we may choose that the Supplier releases us from third party claims.
- (2) The Supplier is obliged to take out product liability insurance cover to an appropriate amount. On demand he shall furnish us with proof of this insurance.

## XI. Property rights

- (1) All objects belonging to Micro – Hybrid Electronic GmbH and assigned to the Supplier remain our property and are to be labelled as such. Unless otherwise agreed in written form, these goods provided may only be used in the manufacture of the product ordered by us.
- (2) Procedural descriptions, drawings, designs, models, tools and similar that the Supplier produces to our specifications shall become our property. The assignment shall be compensated in that the Supplier holds the object in safekeeping for us at no charge. For the duration of the safekeeping period the Supplier shall insure the objects against fire, theft etc. at his own expense.
- (3) Software developed for us – separately or in combination with hardware – shall become our property. This also includes the handover of coding and documentation required for use and maintenance. In the case of software developed specifically for us we shall be entitled to issue licences.
- (4) In the case of goods ordered from third parties on our account the Supplier may only have delivery made to his own address or an address named by us. With the handover of the goods to the Supplier we shall acquire title to the goods directly from the third party. The Supplier is merely the holder of the goods.
- (5) In the event of breach of property rights we shall be entitled to claim compensation and/or withdraw from the contract, at our choice.

## XII. Non-disclosure

- (1) The Supplier commits himself to maintain secrecy regarding all information that is not the general state of the art to which he becomes party during the business relationship and to not make this available to third parties. This also applies to all other information regarding market-strategic modernisations and projects. Employees and sub-suppliers are also to be obliged to maintain secrecy. This does not apply where we have given prior agreement to their revelation in written form on an individual basis.
- (2) Procedural descriptions, drawings, designs, models, tools and similar, together with other details assigned to the Supplier by us for the completion of the order may not be used for other purposes or forwarded to third parties without our prior written authorisation. The same also applies for procedures, drawings, samples, tools and models that the Supplier produces to our specifications. On request, these are to be surrendered promptly together with all copies and transcripts, with the exclusion of right of retention.
- (3) The Supplier is not permitted to supply parts to other companies that either correspond exactly to our specifications or illustrate only minor deviations. This also applies to such parts that we return due to defective delivery.
- (4) In the event of breach of these terms we shall be entitled to claim compensation and/or withdraw from the contract, at our choice.

### **XIII. Non-assignability and transferability**

- (1) The Supplier commits himself to refrain from any assignment of rights or claims against us to third parties, unless we have given prior written agreement to the assignment. Subsequent authorisation on our part shall not render the invalid assignment valid. Clauses 1 and 2 shall not apply where the Supplier has reached agreement with his commercial creditors regarding the extended retention of title; the Supplier shall inform us of this in writing without delay.
- (2) The Supplier may not pledge rights or claims against us to third parties under civil law pursuant to §§ 1273 ff. German Civil Code or 1279 et seqq. German Civil Code. Where enforceable rights or claims against us are pledged, the Supplier shall inform us of this in writing without delay.
- (3) The complete or partial forwarding of orders or licences to third parties requires our prior written authorisation.
- (4) Should the Supplier breach any duties of paragraphs I – III, he shall be liable to us for any loss incurred as a result.

### **XIV. Trademark rights**

- (1) The Supplier shall ensure that no commercial trademark rights or copyrights or any other third party rights are infringed by objects produced by him or third parties in the supply or contractual utilisation of the delivered items. In the event of a claim against us the Supplier shall release us from all claims.
- (2) The Supplier is liable to us, in addition to the statutory requirements, for all loss incurred by us as a result of an infringement. The Supplier shall inform us where foreign trademark rights exist for export goods. This does not apply for the breach of foreign trademark rights where, and to the extent that, the Supplier is unaware that the goods are to be delivered to the country concerned. In this respect the Supplier is only liable to the statutory extent.
- (3) Where the Supplier has trademark rights that concern the utilisation of the goods supplied by him and products manufactured for a specific use, he shall grant us, free of charge, right of equal use to his trademark rights in the scope of the supplied products.

### **XV. Supply of replacement parts**

- (1) The Supplier of such parts as are sold by us in processed or unprocessed form or otherwise passed on by us commits himself to fulfil subsequent orders or orders for replacement parts for the period following.
- (2) Should the Supplier intend to cease production, he shall inform us of this in writing twelve months prior to the actual cessation of production so that we are able to build up stocks.
- (3) Our Terms of Purchasing shall also apply to the new replacement parts.

### **XVI. Termination**

We may terminate the order wholly or partially in the following circumstances in particular:

- Where the creditworthiness of the Supplier deteriorates to such an extent that the fulfilment of the contract appears endangered from our perspective.
- Where bill of exchange or cheque protests exist against the Supplier.
- Where, in our estimation, the Supplier is threatened with inability to pay, unless the Supplier is able to refute this view with suitable means.
- Where insolvency proceedings have been opened against the Supplier or a similar legal or official procedure has been opened.
- Where the opening of insolvency proceedings is rejected due to lack of funds.
- Where the Supplier is in ongoing breach of his contractual obligations.
- Where significant changes occur in the ownership or shareholding structure of the Supplier.

### **XVII. Accident prevention**

The entire order is to be conducted in such a manner as to take account of internal and national standards and technical specifications valid at the time point of the delivery. This applies both to the delivery of machines as well as other products. If the conducting of an order requires activities within our company (as so-called "outside company"), this work shall be co-ordinated with us in order to avoid a possible mutual endangerment. In these cases the Supplier commits himself to ensure that his responsible employees contact our respective safety officers prior to the commencement of the work. The Supplier shall follow the instructions of our safety staff with regard to safety matters. The Supplier assumes full liability for his employees.

### **XVIII. General terms**

- (1) Unless otherwise agreed, our Terms of Purchasing also apply for the ordering of services.
- (2) Contracts of all kinds, together with their amendment and supplementation, require written form. Verbal agreements shall only be binding upon us where these are confirmed by us in writing.
- (3) Should terms of our Terms of Purchasing prove to be invalid or null, this shall not affect the validity of the remaining terms. We are entitled to replace the invalid terms with such that approach our intended purpose as closely as possible.
- (4) Place of performance is the receiving centre stated by us in the order.

Jena is agreed as jurisdiction for all legal disputes. To the extent that our Terms of Purchasing fail to be pertinent, German law shall apply, together with European law, with exclusion of the UN Convention on Contracts for the International Sale of Goods.