

Terms of Sale and Delivery (TSD)

I General terms

1. The legal relationships between Micro-Hybrid and the Ordering Party in relation to the goods and/or services of Micro-Hybrid (hereinafter: deliveries) are governed by these TSD exclusively. General terms and conditions of the Ordering Party shall only apply to the extent that Micro-Hybrid has agreed to them expressly in written form. The mutually corresponding written declarations are authoritative for the scope of the deliveries.
2. Micro-Hybrid reserves unrestricted rights of ownership and copyright utilisation to cost estimates, drawings and other documents (hereinafter: documents). The documents may only be made accessible to third parties with the prior authorisation of Micro-Hybrid and, should the order fail to be placed by Micro-Hybrid, shall be returned without delay at its request. Clauses 1 and 2 apply correspondingly for documents of the Ordering Party; however, these may be made accessible to such third parties that Micro-Hybrid has permissibly assigned with delivery.
3. Short deliveries are permissible, to the extent that these are reasonable for the Ordering Party.

II. Prices, terms of payment and offsetting

1. Prices are ex works excluding packaging, plus the respective statutory value-added tax.
2. Payments shall be made to the Micro-Hybrid point of payment.
3. The Ordering Party may only offset against such claims that are undisputed or legally established.

III. Retention of title

1. The delivery items (goods subject to retention of title) remain the property of Micro-Hybrid until fulfilment of all claims against the Ordering Party arising from this business relationship. Should the value of all rights of security to which Micro-Hybrid is entitled exceed the value of the secured claims by more than 10 %, then Micro-Hybrid shall release a part of the rights of security at the request of the Ordering Party. Micro-Hybrid reserves the right to choose between different rights of security in the release.
2. During the existence of retention of title the Ordering Party is forbidden from undertaking pledging or assignment of security and only permitted to dispose of the goods to commercial customers in standard business transactions and only under the condition that the commercial customer receives payment from his customer or states the reservation that ownership shall only pass to the customer when he has fulfilled his payment obligations.
3. In the event of pledging, confiscation or other placing at disposal or interference of third parties the Ordering Party shall inform Micro-Hybrid without delay.
4. In the event of breach of duty on the part of the Ordering Party, in particular default of payment, following unsuccessful passing of a reasonable period of respite granted to the Ordering Party Micro-Hybrid shall be entitled to retraction of the goods as well as withdrawal from the contract; the statutory terms regarding the expendability of a period of respite are not affected. The Ordering Party is obliged to surrender the goods. The retraction or application of retention of title or the pledging of the goods subject to retention of title by Micro-Hybrid does not constitute a withdrawal from the contract, unless Micro-Hybrid has expressly declared this.

IV. Delivery periods; default

1. Meeting of the delivery periods requires the timely receipt of all documents, permits and authorisations from the Ordering Party, in particular plans, together with the fulfilment of the agreed terms of payment and other obligations by the Ordering Party. If these requirements fail to be met on time, then the periods shall be extended accordingly; this shall not apply where responsibility

for the delay lies with Micro-Hybrid.

2. If the failure to meet the delivery period is due to force majeure, e.g. mobilisation, war, unrest or similar events, such as strikes, lock-outs, then the period shall be extended accordingly. The same also applies in the event of untimely or unorderedly delivery via Micro-Hybrid.
3. The Ordering Party is obliged, at the request of Micro-Hybrid, to declare within a reasonable period of time whether he is to withdraw from the contract or persist with the delivery as a consequence of the default of delivery.
4. If, at the request of the Ordering Party, shipment or delivery are delayed by more than one month following declaration of readiness for shipping, then the Ordering Party may be charged storage fees of 0.5 % of the price of the items in the delivery, to a maximum of a total of 5 %, for each subsequent month commenced. The contracting parties reserve the right to prove higher or lower storage costs.

V. Passing of risk

Including in cases of carriage paid delivery, risk is passed to the Ordering Party for shipments where they are brought for shipment or collected. At the request and expense of the Ordering Party deliveries may be insured against the usual transport risks by Micro-Hybrid.

VI. Receipt

The Ordering Party may not refuse receipt of deliveries due to negligible defect.

VII. Defects of quality

Micro-Hybrid is liable for defects of quality as follows:

1. All parts or deliveries manifesting defects of quality shall, free of charge, either be subsequently improved, delivered anew or provided anew, at the choice of Micro-Hybrid, to the extent that the cause of defect existed at the time of passing of risk.
2. Claims for supplementary performance lapse in 12 months from the beginning of the statutory period of limitation; the same also applies for withdrawal and reduction. § 479 para. 1 (right of recourse), German Civil Code regulates in the event of intent, malicious concealment of the defect, as well as failure to meet a guaranteed quality. The statutory regulations regarding suspension of expiry, suspension and recommencement of the periods remain unaffected.
3. Notifications of defect on the part of the Ordering Party shall be performed without delay, in written form.
4. The Ordering Party may only retain payments where a claim for defect is applied where no doubts exist with regard to its validity. A right of retention on the part of the Ordering Party shall not exist where his claims for defect have lapsed. If the claim for defect is unjustified, then Micro-Hybrid shall be entitled to demand compensation of the costs that it has incurred from the Ordering Party.
5. Micro-Hybrid shall be provided with the opportunity to supplementary performance, within a reasonable time period.
6. Claims for defects do not exist in the case of insignificant deviations from the agreed specifications, in the case of negligible limitation of usability, in the case of natural wear and tear and damage caused following the transfer of risk as a result of incorrect or negligent treatment, overuse, unsuitable equipment or due to particular external influences not foreseen by the contract, as well as non-reproducible software defects. If inexpert maintenance work or alterations are undertaken by the Ordering Party or third parties, then no claims for defects shall exist for these or consequential damage.

7. Claims of the Ordering Party arising from expenses incurred for the purpose of supplementary performance, in particular transport expenses, costs of labour and material, are excluded, where expenses are increased because the subject of delivery has subsequently been transported to a location other than the premises of the ordering party, unless the transfer corresponds to the intended purpose.
8. Rights of recourse of the Ordering Party against the Delivering Party pursuant to § 478 German Civil Code (recourse of the business man) shall only exist to the extent that the Ordering Party has not entered into agreements with his customer beyond the statutory claims for defects. For the scope of the right of recourse of the Ordering Party against Micro-Hybrid pursuant to § 478 section 2 German Civil Code the above subsection 8 shall also apply accordingly.
9. Claims for compensation of the Ordering Party for defects of quality are excluded. This shall not apply in the case of intentional or negligent breach of duty of care for life, limb, health or liberty and intentional or grossly negligent breach of duty on the part of Micro-Hybrid. An amendment of the burden of proof to the detriment of the Ordering Party is not associated with the aforementioned conditions. Further claims of the Ordering Party or claims for material defect other than those regulated in this art. VII are excluded.

VIII. Industrial property rights and copyright; defects of title

1. Unless otherwise agreed, Micro-Hybrid is obliged to perform delivery solely in the country of the place of delivery free from industrial property rights and copyright of third parties (hereinafter: property rights). Where a third party pursues a justified claim against the Ordering Party due to breach of property rights by deliveries performed by Micro-Hybrid in keeping with the contract, Micro-Hybrid shall be liable to the Ordering Party within the period specified in art. VII no. 2 as follows:
 - a) Micro-Hybrid, at its choice and at its cost, shall either obtain a legal right of use for the deliveries concerned or amend them in such a way as to ensure that the property rights are not infringed, or replace them.
 - b) The obligation of Micro-Hybrid to compensate is based upon art. X.
 - c) The aforementioned obligations of Micro-Hybrid only exist to the extent that the Ordering Party has informed Micro-Hybrid in writing of the claims of the third party without delay, that infringement has not been acknowledged and where Micro-Hybrid reserves the right to all defensive measures and settlement actions. Should the Ordering Party cease the use of the delivery for loss minimisation or other important reasons, then he shall be obliged to inform the third party that cessation of use does not constitute acknowledgment of infringement of property rights.
2. Claims of the Ordering Party are excluded where it is responsible for the property right infringement.
3. Moreover, claims of the Ordering Party are also excluded where the property right infringement has been caused by specific specifications of the Ordering Party, by an application not foreseeable by Micro-Hybrid or where the delivery has been amended by the Ordering Party or joined together with products not supplied by the Delivering Party.
4. In the case of property right infringements the terms of art. VII no. 4, 5 and 9 shall apply to the claims of the Ordering Party under no. 1 a).
5. Where other defects of title exist, the terms of art. VIII shall apply accordingly.
6. Further claims of the Ordering Party or claims other than those regulated under art. VIII against Micro-Hybrid and its agents for defects of title are excluded.

IX. Unenforceability; adaptation of contract

Where unforeseen events pursuant to art. IV no. 2 significantly alter the economic significance or the content of the delivery or have a significant effect on the operations of Micro-Hybrid the contract shall be adapted accordingly, in good faith. Where this is not economically reasonable, Micro-Hybrid shall be entitled to withdraw from the contract. Should it wish to exercise this right, it shall inform the Ordering Party without delay following recognition of the extent of the event, also in cases where an extension of the delivery period has been agreed with the Ordering Party.

X. Other claims for compensation; limitation

1. Claims for compensation of the Ordering Party, regardless of legal basis, in particular for breach of duties from contractual obligations and unauthorised action, are excluded.
2. This shall not apply in cases of compulsory liability, for example under product liability law, in cases of intent, gross negligence, breach of duty to life, body or health, or due to the infringement of significant contractual obligations. The claim for compensation for the breach of significant contractual obligations is limited to conceivable loss typical for the contract, however, unless intent or gross negligence exists, or where liability exists for injury to life, body or health. An amendment of the burden of proof to the detriment of the Ordering Party is not associated with the aforementioned conditions.
3. To the extent that the Ordering Party has claims for compensation, these shall lapse with the termination of the limitation period pursuant to art. VII no. 2. The same also applies for claims of the Ordering Party in relation to loss avoidance measures (e.g. recall actions). In the case of claims for compensation under product liability law the statutory statute of limitations shall apply.

XI. Jurisdiction and applicable law

1. Sole jurisdiction, where the Ordering Party is a businessman, for all disputes arising directly or indirectly from the contractual relationship is the registered office of the Delivering Party. However, the Delivering Party is also entitled to pursue claims against the Ordering Party at the registered office of the Ordering Party.
2. German substantive law is applicable for the legal relationship in association with this contract, under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

XII. Binding force of the contract

The contract remains binding in the remainder even in the case of legal invalidity of individual terms. This shall not apply where adherence to the contract represents an unreasonable hardship for one party.