

General Terms and Conditions of Business
of MICON GmbH Metallurgie und Rohstoffe, 40670 Meerbusch, Germany

§ 1
General Provisions

- (1) These General Terms and Conditions of Business (hereinafter: "**General Terms of Business**") regulate all of our (MICON GmbH Metallurgie und Rohstoffe) – also future – deliveries and services (hereinafter: "**Deliveries**") to our customers (hereinafter: "**Customer**").
- (2) These General Terms of Business in the version in effect at the respective order date shall apply exclusively to the business relationship between us and the Customer. General terms and conditions which conflict with or deviate from the following provisions shall not apply. General terms and conditions of the Customer shall only apply insofar as we have expressly consented thereto in writing. These General Terms of Business shall also apply exclusively if we execute delivery without reservation, with knowledge of terms and conditions which are contrary to or in deviation of the present General Terms of Business.
- (3) Individual agreements reached in an individual case with the Customer (including ancillary agreements, supplements and amendments) shall prevail over these General Terms of Business in all cases. A written contract or our written confirmation is decisive for the contents of such agreements.
- (4) Legally relevant declarations and notifications which are to be submitted to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction) must be in written form in order to be legally valid.
- (5) References to the validity of statutory regulations shall only have clarifying significance. The statutory regulations also apply thus without such a clarification, insofar as they are not directly amended or explicitly excluded in these General Terms of Business.

§ 2
Contract Conclusion

- (1) Our offers are always subject to change without notice. The Customer makes a legally binding order upon sending an order (by fax, e-mail, letter or by telephone). The Customer is bound to the order for three (3) work days - calculated from the date of receipt of the order by us. A contract first comes into effect when we accept the Customer's order by a written declaration of acceptance (e.g. contract confirmation) or by delivery of the ordered good(s). Offers made by us for conclusion of a purchase contract must be in written form in order to be legally valid. If we make an offer to the Customer for conclusion of a contract, the contract shall first be deemed to come into legal effect upon a legally valid written acceptance (by fax, e-mail or letter). All agreements, also ancillary agreements, other commitments or subsequent amendments to the contract, shall require our written confirmation to be legally valid.
- (2) We reserve our property ownership and copyright rights of use to cost estimates and other documents (hereinafter: "**Documents**") without limitation. Third parties shall only be allowed access to the Documents after our prior consent and, if the contract with us is not awarded, are to be returned to us upon demand without undue delay.
- (3) Partial deliveries are permissible insofar as such would be deemed reasonable for the Customer, taking into consideration our interests and the Customer's own legitimate interests.

§ 3
Prices and Payment Terms

- (1) Prices agreed upon with the Customer are binding. Insofar as not otherwise agreed, prices are ex works excluding packaging, plus the respectively applicable statutory VAT.
- (2) In cases of sales with delivery (§ 4, para. 7), the Customer shall bear the transport costs ex works and the costs of any transport insurance requested by the Customer. The Customer shall bear the costs of any customs, fees, taxes and other public charges. With the exception of Euro pallets and grid boxes, we shall not take back any transport and any other packaging according to the German Packaging Ordinance (*Verpackungsordnung*); such become the property of the Customer. The Customer agrees to exchange Euro

pallets and/or grid boxes received against respective Euro pallets and/or grid boxes in the same quantity and quality. Should the Customer fail to provide us with respective Euro pallets and/or grid boxes, the Euro pallets and/or grid boxes delivered by us shall be invoiced to the Customer.

- (3) Payment terms shall be agreed upon by contract with the Customer. Insofar as not otherwise agreed, the purchase price is payable and due within 30 days of the invoice date and delivery of the goods. The Customer is in default of payment upon expiry of the (afore-mentioned) payment date. During the default period, the purchase price shall accrue interest at the respectively applicable statutory default interest rate. We reserve the right to claim additional default damage.
- (4) In the event of payment default by the Customer, we shall be entitled to immediately claim all outstanding amounts owed.
- (5) In cases of delivery of defective goods, the Customer's possibilities of offsetting such defect claims as well as with other claims from the same contract relationship against our purchase price claim shall not be limited by these General Terms of Business; however, the Customer can only offset with claims from other legal relationships insofar as its claims are undisputed, we have recognized such or such have been determined with legally valid *res judicata* effect. As the purchaser, the Customer may only exercise a right of retention if its counterclaim is based on the same purchase contract.
- (6) Should it become apparent after conclusion of the contract that our claim to the purchase price is at risk due to the Customer's inability to perform (e.g. by filing an application for opening of an insolvency proceeding), we shall be entitled to refuse performance according to the statutory regulations and - as applicable, after affixing a deadline for performance – to rescind the contract (§ 321 German Civil Code (*Bürgerliches Gesetzbuch, BGB*)). In cases of contracts for the manufacture of non-fungible goods (custom-made products), we can declare rescission immediately; the statutory regulations related to dispensability of setting a deadline remain unaffected.

§ 4 Delivery, Delivery Dates, Transfer of Risk

- (1) Delivery dates shall be individually agreed or, respectively, stated by us upon acceptance of the order.
- (2) Insofar as we cannot meet binding delivery dates due to reasons for which we are not responsible (non-availability of the service), we shall inform the Customer hereof without undue delay and, at the same time, give notice of the foreseeable new delivery date. Should the service also not be available within the new delivery period, we shall be entitled to rescind the contract, in whole or in part; any counter-performance already rendered by the Customer shall be reimbursed without undue delay. A case of non-availability of the service within the meaning of this provision shall in particular be deemed to be the non-timely delivery to us by our supplier(s), if we have concluded a congruent hedging transaction, neither we nor our supplier is at fault or we are not obligated to procurement in the individual case.
- (3) The occurrence of default of delivery on our part shall be determined according to the statutory provisions. In any case, however, a warning notice by the Customer shall be required.
- (4) In cases of default of delivery caused by us through ordinary negligence, the default damage which the Customer can claim shall amount to a maximum of 0.5 % of the agreed net purchase price for each completed delivery week of the default and in total a maximum amount of 5 % of the agreed net purchase price. We reserve the right to prove that the Customer did not incur any damage at all or only a substantially lesser damage than the afore-mentioned flat rate amount. The limitation of the flat rate default damage to a maximum amount of 5 % of the delivery value of the late delivered goods shall not apply insofar as the default of delivery is due to breach of contract caused by willful intent or gross negligence for which we are responsible. The rights of the Customer to demand damages in lieu of performance where the legal preconditions are met and within the framework of the limitations of liability regulated below (§ 6 Total Liability) remain unaffected.
- (5) Should the Customer be in default of acceptance of the goods (default of acceptance), fail to act in cooperation or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand the damage resulting herefrom including additional expenses (e.g. storage costs). We shall calculate flat rate compensation herefor per calendar week in the amount of 0.5 % of the net price (delivery value) of the goods accepted late, commencing with the delivery deadline or, respectively – absent

a delivery deadline – with notification of the availability of the goods for shipment, delivery or collection. Proof of greater damage and any statutory claims to which we are entitled (in particular, reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the flat rate damage is to be offset against additional monetary claims. The Customer is reserved the right to prove that we did not suffer any damage at all or only substantially lesser damage than the afore-mentioned flat rate.

- (6) The rights of the Customer according to § 6 of these General Terms of Business and our statutory rights, in particular, in cases of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance) remain unaffected.
- (7) The assumption of risk with regard to loss/destruction and/or the accidental deterioration of the goods shall be agreed upon by contract - by means of reference to the pertinent Incoterm regulations. In cases of sales with delivery, unless otherwise contractually agreed, the risk of accidental loss and deterioration of the goods as well as the risk of delay are passed to the Customer upon delivery of the goods to the carrier, the freight forwarder or any other person or institution stipulated to carry out the shipment.

§ 5 Warranty

- (1) In derogation of § 438, para. 1, No. 3 BGB, the general statute of limitations period for claims arising from material defects and defects of title shall be one (1) year as from the date of delivery. Insofar as acceptance has been agreed, the statute of limitations period shall begin upon the acceptance. The statutory special regulations remain unaffected, in particular, for *in rem* delivery claims of third parties (§ 438, para. 1, No. 1 BGB), in cases of fraudulent intent on the part of the seller (§ 438, para. 3 BGB), claims from the supplier recourse with final delivery to a consumer (§ 479 BGB) and insofar as the law prescribes longer time periods before limitation of claims according to §§ 438, para. 1, No. 2 (building and things used for buildings) and 634a, para. 1, No. 2 (building defects) BGB.
- (2) Insofar as the Customer can demand subsequent performance, this shall occur at our choice and at our cost by delivery of a new object (replacement delivery) or by elimination of the defect (remedy). The statutory rights of the Customer upon failure of subsequent performance remain unaffected.
- (3) Should the defect exist in the form of a breach of an intellectual property right or copyright of a third party, we shall at our choice and at our cost modify or exchange the delivery object so that no rights of third parties are infringed any longer but that the delivery object continues to demonstrate the contractually agreed quality or procure for the Customer a right of use by conclusion of a license contract. Should this not be possible within a reasonable time period, the Customer shall be entitled to rescind the contract or reduce the purchase price. Each contract partner shall notify the respective other contract partner in writing without undue delay if claims are made by a third party against it due to breach of an intellectual property right or copyright.
- (4) We are entitled to make the subsequent performance owed dependent upon the Customer paying the purchase price due. The Customer is entitled, however, to withhold a reasonable part of the purchase price which is in a reasonable relationship to the defect.
- (5) Claims of the Customer for damages or reimbursement of futile expenses exist, also with defects, only according to § 6 hereof and are otherwise precluded.

§ 6 Total Liability

- (1) Our liability for damages is based exclusively on the provisions of this § 6.
- (2) Our liability is not limited in cases of:
 - a) damages resulting from death, injury to body or health which are caused by a willfully intentional or negligent breach of obligation on our part (i.e. MICON GmbH), one of our statutory representatives or vicarious agents;
 - b) damages which result from a willfully intentional or grossly negligent breach of obligation on our part, one of our statutory representatives or vicarious agents (including fraudulent failure to disclose a defect); or

- c) claims from a guarantee of quality assumed by us or any other guarantee insofar as a limitation does not result from the content of the guarantee declaration.
- (3) Our liability for damages caused by ordinary negligent breach of essential contract obligations (contract obligations which, when fulfilled, make the performance of the contract possible at all and compliance with which the Customer generally relies and may rely on) insofar as para. (2) does not apply, is limited in terms of amount to the damages foreseeably typical of the contract.
- (4) Otherwise, our liability for damages, regardless of the legal grounds, in particular, due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations with the contract negotiations and tortious acts is precluded.
- (5) Claims according to the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected by the provisions of this § 6.
- (6) The afore-mentioned exclusions of liability and limitations apply in the same scope also in favor of our company organs, statutory representatives, employees and other vicarious agents.

§ 7 Reservation of Ownership Title

- (1) The goods delivered by us remain our property until full satisfaction of all claims (including all outstanding balance claims on current accounts) to which we are entitled from our business relationship with the Customer currently or in the future.
- (2) Insofar as the value of the objects to which our reservation of ownership title exists (hereinafter: "**Reserved Goods**") exceeds our claims against the Customer for more than just a temporary period by more than 10 %, we shall release the Reserved Goods upon the request of the Customer in the respective extent to which the value exceeds the claims against the Customer, whereby the selection shall be made by us according to our due discretion.
- (3) The Customer is entitled to process and sell the Reserved Goods in the normal course of business as long as it is not in default of payment for the respective Reserved Goods. Pledges or transfers of the Reserved Goods by way of security are not permitted. The Customer assigns to us already now by way of security in the total amount the claims resulting from the resale or any other legal reason (insurance, tortious act) with regard to the Reserved Goods (including all outstanding balance claims on current accounts). We revocably authorize the Customer to collect the claims assigned to us for its account in its own name. This collection authorization can only be revoked if the Customer fails to properly meet its payment obligations. Should the collection authorization be revoked, however, the Customer shall be obligated to give us notice of the claims assigned to us and the respective debtors thereof, to provide all information necessary for collection, to deliver all documents related hereto and to notify the debtor (third party) of the assignment.
- (4) The reservation of ownership title extends to the objects resulting from the processing, commingling or combination of our goods at their full value, whereby we shall be deemed the manufacturer. Should, after processing, commingling or combination with goods of third parties, their ownership rights remain in effect, we then obtain co-ownership in the relationship of the invoice value of the processed, commingled, or combined goods. Otherwise, the same shall apply for the resulting product as for the goods delivered subject to reservation of ownership title. The Customer shall hold the thus created sole ownership or co-ownership for us at no cost.
- (5) In cases of interventions of third parties against the Reserved Goods (in particular, in cases of an attachment), the Customer shall point out our (co)ownership to the third party and notify us without undue delay.

§ 8
Force Majeure

- (1) No contract party shall be responsible for the non-fulfillment of its contractual obligations when the non-fulfillment is prevented by circumstances beyond the contract party's control or is based, in particular, on the following reasons: fire, natural catastrophe, war, seizure, trade and/or export restrictions, general shortage of raw materials, limitation of energy consumption, labor disputes or if breaches of contract of suppliers are based on these reasons. This regulation shall apply for all contractual obligations including liability to pay damages.
- (2) Each party may cancel the contract by written termination in the case its performance thereof is prevented for a period of more than six (6) months according to § 8, para. 1 hereof.

§ 9
Final Provisions

- (1) The Customer is not entitled to assign the purchase contract concluded with us or parts thereof to third parties without our written approval.
- (2) We are entitled to assign our claims against the Customer to third parties.
- (3) Insofar as declarations are made in several languages, the German version shall prevail in cases of contradictions.
- (4) The law of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods (CISG), shall apply to these General Terms of Business as well as all legal and contractual relationships between us and the Customer.
- (5) Jurisdiction for all disputes arising from or in connection with the contract between us and the Customer is Düsseldorf.
- (6) The Customer shall bear all fees, costs and expenses incurred in connection with any successful legal prosecution against the Customer outside Germany.

As of: November 2017