

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

**§ 1**  
**General - Scope of Application**

- (1) These General Terms and Conditions of Purchase (hereinafter referred to as the "**General Terms of Purchase**") regulate the business relationship between us, MICON GmbH Metallurgie und Rohstoffe, and our suppliers from which we purchase or, respectively, make use of goods and/or services (hereinafter referred to as the "**Supplier(s)**"). These General Terms of Purchase apply in their respectively valid version as the framework agreement also for future contracts related to the delivery of goods and/or the performance of any services, without our being required to make reference to them again in each individual case; we shall inform the Suppliers of amendments to the General Terms of Purchase in this case without undue delay.
- (2) These General Terms of Purchase shall have exclusive application for all legal relationships between us and a Supplier in the version in effect on the order date. Contradictory provisions of the Supplier or its provisions which deviate or amend the following provisions are not recognized by us unless we have expressly consented to their applicability in writing. Our General Terms of Purchase shall also apply if we accept delivery from the Supplier without reservation and with knowledge of provisions of the Supplier which contradict or deviate from the General Terms of Purchase.
- (3) All agreements which are made between us and the Supplier for the purpose of execution of a contract as well as all ancillary agreements, amendments, termination or rescission of the contract or its cancellation must be in writing. This shall also apply for waiver of the writing requirement or its amendment.
- (4) Our General Terms of Purchase shall apply only vis-à-vis companies as defined in § 14 German Civil Code (*Bürgerliches Gesetzbuch, BGB*), a legal person under public law and a special fund under public law.

**§ 2**  
**Offer - Conclusion of Contract - Offer Documents**

- (1) Our order for goods and/or services shall first be deemed to be binding upon submission of the written order (also per e-mail or telefax). The Supplier shall point out apparent errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents to us for purposes of correction or completion prior to acceptance of the order; otherwise, the contract shall be regarded as not having been concluded.
- (2) The Supplier is obligated to confirm our order in writing (acceptance) within a deadline of three (3) work days, starting from the order dispatch date. In this respect, we shall deem ourselves bound to our order for the afore-mentioned time period. A contract with us shall first be deemed to be concluded when the Supplier confirms our order without reservation. When the Supplier makes an offer, we are entitled to accept this offer within a reasonable time period; in this case, a contract shall first be concluded upon our written acceptance.
- (3) Without our prior written approval, the Supplier is not entitled to engage third parties, in particular, freelance employees, subcontractors, etc. with the performance of the deliveries, services or parts thereof to be performed by it according to the contract concluded with us.

**§ 3**  
**Prices - Payment Terms**

- (1) The price quoted in our order is binding. Unless otherwise stated in the order, the prices stated by us are in Euros, carriage paid including customs duties, freight, transport insurance, etc. as well as any packaging.
- (2) Invoices are to be submitted to us separately in simple form after delivery made, i.e. such are not to be attached to the shipment(s). We are only able to process invoices when the order number indicated on our order is stated on the respective invoice and sent by e-mail to the address: [invoicing-micon@micon-metalle.de](mailto:invoicing-micon@micon-metalle.de) (respectively one invoice per mail in PDF format, attachments as separate PDF documents). The Supplier shall be responsible for all resulting consequences caused by failure to perform this obligation unless it can prove lack of fault on its part.
- (3) Insofar as not otherwise agreed in writing, we shall pay the invoice amount calculated as from complete delivery and receipt of the invoice pursuant to § 3, para. 2 hereof within the payment period stated in the order.
- (4) We shall be entitled to rights of set-off and retention in the scope permitted by law.

**§ 4**

#### **Delivery Date**

- (1) The delivery date stated in the order is binding.
- (2) The Supplier is obligated to notify us without undue delay in writing if circumstances occur or become apparent to it from which it results that the stipulated delivery date cannot be met. The Supplier shall inform us of the reasons for the delivery delay and the foreseeable duration thereof.
- (3) We shall be entitled to the statutory claims in cases of default of delivery. In particular, we shall be entitled, after setting a reasonable extension period which expires without effect, to demand damages in lieu of performance and/or to rescind the contract. If the Supplier has only partially rendered the owed performance, we can only demand damages in lieu of the full performance if we have no interest in the partial performance rendered. If we demand damages, the Supplier shall have the right to prove that it was not responsible for the breach of obligation.

#### **§ 5 Delivery - Documents**

- (1) Insofar as not otherwise agreed in writing, delivery shall be made carriage paid. The Supplier shall only be entitled to make partial deliveries on the basis of separate agreement. Partial deliveries are to be designated as such.
- (2) The Supplier is obligated to state completely on all shipment documents and delivery notes not only the article description but also our order numbers, gross and net weights as well as the type and number of packaging. Should the Supplier fail to do so, delays in processing shall be unavoidable for which we take no responsibility.
- (3) Costs for insurance shall only be charged to us if such has been agreed with us in advance in writing (e.g. by agreement to a certain Incoterm regulation). In no case shall insurance contracts release the Supplier from its liability to us.

#### **§ 6 Inspection for Defects - Liability for Defects**

- (1) We are obligated to inspect the goods within a reasonable time period for any deviations of quality and quantity.
- (2) We are entitled to make statutory defect claims in full. At our choice, we are entitled to demand remedy of defects or replacement delivery from the Supplier. We shall be allowed to choose whether remedy of defects or replacement delivery shall be rendered at our premises or at the site of use of the goods as intended. The Supplier is obligated to bear all expenses necessary for the purpose of remedy of defects or replacement delivery. The right to damages, in particular, damages in lieu of performance, remains expressly reserved.
- (3) Subsequent performance by the Supplier shall be deemed to have failed in all cases following the first failed attempt - even if such only partly fails. We shall be entitled to undertake remedy of defects ourselves at the cost of the Supplier if the Supplier is in default with remedy of defects.
- (4) The costs to be borne by the Supplier with remedy of defects include also the costs for packaging, freight and transport, the costs for the work expended for disassembly and installation, if applicable, travel costs and the execution of remedy of defects at our premises or at the site of use of the goods as intended.
- (5) Our claims for defects shall be time-barred within two (2) years after transfer of risk or, if an acceptance obligation results from the circumstances, upon acceptance of the goods insofar as no longer statutory period of limitation exists.
- (6) The Supplier guarantees careful and proper performance of the contract, in particular, the quality and suitability of the delivery with regard to materials and/or construction and the documents (safety data sheets, plans, etc.) related to the delivery.
- (7) The Supplier shall bear responsibility to us in every case, even without fault, for deliveries and services procured by it, e.g. from third parties, in the same way as for its own deliveries and services. This shall apply, in particular, for defects.
- (8) The Supplier shall indemnify us against all claims that are brought against us by our own customers which are asserted against us on the basis of advertising statements made by the Supplier, a subcontractor of the Supplier (as manufacturer as defined in § 4, para. 1 or 2 of the German Product Liability Act (*Produkthaftungsgesetz*) or a vicarious agent of one of the above-mentioned parties and which would not exist without the advertising statement or not in this form or amount. This regulation shall apply regardless of whether the advertising statement is made before or after conclusion of the delivery contract.

#### **§ 7**

### **Product Liability - Indemnification**

- (1) Insofar as the Supplier is responsible for product damage, it shall be obligated to indemnify us against damage claims of third parties upon first demand if the cause is within the Supplier's field of control and organization and the Supplier would be held liable itself in the legal relationship with third parties.
- (2) Within the framework of the Supplier's own liability according to para. 1 hereof, it shall also be obligated to reimburse us any expenses according to §§ 683, 670 BGB as well as according to §§ 830, 840, 426 BGB which result from or in connection with a recall action performed by us. We shall notify the Supplier with regard to the content and scope of the recall measures to be undertaken – insofar as possible and reasonable – and provide it the opportunity to comment thereon. Other statutory claims remain unaffected.
- (3) The Supplier agrees to maintain flat rate product liability insurance with insurance cover of EUR five (5) million per personal injury/property damage claim and to prove to us the existence of such insurance protection upon respective demand therefor. Should we be entitled to additional damage claims, these shall remain unaffected.

### **§ 8 Intellectual Property Rights**

- (1) The Supplier guarantees that no third party rights are infringed in connection with its deliveries.
- (2) Should any third party claims be asserted against us due to infringement of their rights, the Supplier shall be obligated to indemnify us against these claims on our first written demand. In cases of damage claims of third parties, the Supplier is reserved the right to prove that it is not responsible for infringement of the rights of third parties. We are not entitled – without the consent of the Supplier – to make any agreements with third parties, in particular, to conclude a settlement.
- (3) The Supplier's indemnification obligation shall cover all expenses necessarily incurred by us as a result of or in connection with any third party claims.
- (4) The statute of limitations period for claims arising from this regulation shall be three (3) years calculated as from the date of transfer of risk.

### **§ 9 Reservation of Ownership Title – Materials Provided – Tools - Confidentiality**

- (1) Insofar as we provide the Supplier with parts, substances, materials or other tools or aids, we reserve ownership title hereto (Goods Subject to Reservation). Processing or modification thereof by the Supplier shall be undertaken solely on our behalf. Should our Goods Subject to Reservation be processed or modified together with goods which do not belong to us, we shall acquire co-ownership in the new product in the proportionate relationship of the value of our Goods Subject to Reservation (purchase price plus VAT) to the other processed or modified objects at the date of processing or modification. In addition, the Supplier agrees to treat the Goods Subject to Reservation provided by us with due care.
- (2) Should our Goods Subject to Reservation be inseparably mixed, combined or commingled with goods which do not belong to us, we shall acquire co-ownership in the new product resulting therefrom in the proportionate relationship of the value of our Goods Subject to Reservation (purchase price plus VAT) to the other objects on the date of the mixing, combination or commingling. Should it occur that the mixing, combining or commingling takes place in a manner that the product of the Supplier is to be deemed to be the main product, it shall be agreed that the Supplier transfers the right of co-ownership to us pro rata. The Supplier shall hold the sole ownership or co-ownership on our behalf.
- (3) We reserve ownership title to tools and/or forms. The Supplier is obligated to use the tools and/or forms exclusively for the manufacture of the goods ordered by us. Furthermore, the Supplier is obligated to insure the tools and/or forms belonging to us at their replacement value at its own cost against damage caused by fire, water and theft. At the same time, the Supplier assigns to us already now all claims for compensation from this insurance. We hereby accept said assignment. The Supplier is obligated to perform any necessary maintenance and inspection work as well as all servicing and repair work on our tools and/or forms in a timely manner at its own cost. The Supplier shall notify us immediately of any instances of malfunction. Should the Supplier culpably fail to do so, we reserve the right to make damage claims.
- (4) Copies of materials provided, tools and/or forms may only be made after our prior written consent. Ownership title to copies shall be transferred to us upon their production.
- (5) The Supplier shall not be entitled to a right of retention, regardless of the grounds, to the materials provided and tools.

- (6) The Supplier is obligated to maintain as strictly secret and confidential all illustrations, drawings, calculations and other documents and information received. These may be disclosed to third parties only with our express consent. The confidentiality obligation shall apply also after the ending of the contract. It shall be cancelled first if and insofar as the production know-how contained in the illustrations, drawings, calculations and other documents transferred become public knowledge or it is proved that such was known to the Supplier already at the date of the notification within the meaning of sentence 1 hereof.
- (7) Insofar as the security rights to which we are entitled pursuant to para. 1 and/or para. 2 hereof exceed the purchase price of our entire not-yet paid Goods Subject to Reservation by more than 10 %, we shall be obligated upon the request of the Supplier to release security rights at our discretion.

**§ 10  
Miscellaneous**

- (1) Exclusive place of jurisdiction for any disputes related to all rights and contractual legal relationships from these General Terms of Purchase between us and the Supplier is Düsseldorf.
- (2) Insofar as not otherwise regulated in the order, place of performance is our registered office.
- (4) Should one or more provisions of these General Terms of Purchase be invalid, such shall not affect the legal validity of the remaining provisions.
- (5) These General Terms of Purchase as well as all legal and contractual relationships between us and the Supplier shall be governed exclusively by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

As of: December 2016