

## **General Terms and Conditions of Purchase of MIKROPUL GmbH (Issue October 2009)**

### **Section 1 Scope**

(1) These terms and conditions apply exclusively to all our orders and requests for quotation. They also apply – in the respective then current version – to all future business relations with the Supplier, even if they are not explicitly agreed upon for each transaction. Any other terms and conditions will not become part of the contract, even if we do not reject them explicitly while being aware of them.

(2) If reference to Incoterms is made in contractual agreements, the Incoterms 2000 shall apply.

### **Section 2 Offers made by the Supplier**

(1) Offers made by the Supplier shall be at no cost to ourselves and shall be binding on the Supplier. The Supplier's offers shall be based on the exact quantities and condition of goods as specified in our requests for quotation and shall expressly point out any deviations therefrom.

(2) All samples, drawings and other documents that we provide to the Supplier with our request for quotation shall be enclosed with the Supplier's offer.

### **Section 3 Orders**

(1) No orders or agreements are binding unless we issue or confirm them in writing, via facsimile or e-mail. Should any orders or agreements be made orally or by telephone, we must confirm them in writing subsequently for them to be binding, as must any oral ancillary agreements or amendments to the contract. The same principle shall also apply to any deliveries or services that are additionally agreed. Our silence to suggestions, requests, etc. made by the Supplier shall by no means be interpreted as our consent to the Supplier's suggestion.

(2) Any of our orders that the Supplier wishes to accept need to be confirmed in writing by the Supplier. If we do not receive the confirmation of order within two weeks after receipt of the order by the Supplier, we are no longer bound by the order. In case of informal transactions, our written order shall qualify as a commercial letter of confirmation.

(3) We do not recognise any order confirmations that vary from our order, even if we do not reject them in writing.

(4) We may demand that changes be made to the goods to be supplied and/or the delivery dates also after the conclusion of the contract where this is reasonable for the Supplier. If contracts shall be amended accordingly, the effects on both sides must be taken reasonably into account, particularly in terms of additional or reduced costs and with regard to the delivery dates.

(5) If the Supplier realises or should realise as an expert in his field that an order is incomplete, or that the purpose of the order cannot be achieved by this delivery, he must inform us accordingly without undue delay and in detail.

### **Section 4 Delivery periods**

(1) The delivery periods and dates specified in our order are bindingly agreed unless the Supplier has explicitly rejected these in writing or we have agreed other dates with the Supplier in writing. If we did not specify delivery dates in our order, the delivery dates specified by the Supplier are bindingly agreed. Whether delivery dates or deadlines are met depends on when goods reach our designated place of use and/or if they are accepted in time.

(2) The Supplier does not have the right to make partial deliveries or provide partial performance.

(3) Should the Supplier realise that he cannot meet the agreed delivery dates, he must notify us accordingly without undue delay in writing, stating the reasons and how long the delay is likely to last.

(4) If we accept supplies or services which are late, this does not amount to waiving the right to claim damages.

(5) Should the Supplier be unable to meet agreed deadlines for reasons he is responsible for, we may, after expiration of a reasonable period of grace set by us, demand damages instead of delivery or procure substitute goods from third parties at the Supplier's expense and/or rescind the contract. Should deliveries be delayed repeatedly, and we issue a prior warning letter in writing, we may also revoke any or all orders not performed at that time with immediate effect.

(6) If the Supplier is unable to comply with the agreed deadline or delivery date due to force majeure (e.g. strike at the Supplier, civil unrest, war, fire, flooding) or due to unforeseeable and unavoidable disruption of his own production operations, the delivery period shall be extended by the duration of the disruption. The Supplier may appeal to the aforementioned grounds only on the condition that he informs us immediately about the hindrance and its prospective duration. If the disruption is more than temporary in duration and acceptance of Supplier's late performance is unreasonable for us due to the delay, we have the right to withdraw from the contract in respect of the part which has not yet been fulfilled. In case of a partial performance, we have the right to withdraw from the contract in its entirety if we have no interest in the partial performance.

(7) Unless the preceding regulations of this Section 4 provide otherwise, the statutory provisions shall apply as regards the Supplier's liability for delays.

## Section 5 Prices, dispatch, packaging, transfer of risk and title

(1) Prices are fixed once agreed, and include the costs of packaging, freight and transport to our specified delivery address and/or point of use, unless explicitly agreed otherwise.

(2) Unless explicitly agreed otherwise, dispatch is at the Supplier's risk. The risk of all kinds of deterioration, including loss by accident, remains with the Supplier until delivery to our specified delivery address and/or place of use.

(3) Title to products supplied passes to us when they are paid for. We do not accept any extended or prolonged retention of title on the Supplier's part.

## Section 6 Warranty and liability

(1) Warranty and liability are governed by the statutory provisions unless otherwise stipulated in these terms and conditions or in any other written agreement between ourselves and the Supplier.

(2) The Supplier warrants and assures (*Zusicherung*) that all supplies and services he provides are state-of-the-art, comply with relevant legal requirements and instructions and guidelines of the competent authorities, mutual indemnity associations and professional associations, and meet the functions and specifications required. The Supplier also warrants and assures to comply with all the data and quality standards as stated in our drawings and/or supply specifications. Should these specifications have to be varied in exceptional cases, the Supplier must obtain our prior consent to this in writing. This consent does not affect the Supplier's warranty and guarantee obligations. Should the Supplier have any concerns as to our desired manner of performance, he must inform us in writing without undue delay.

(3) We are obligated to inspect the supplied goods and to lodge complaints about defects only to the extent stipulated in the statutory regulations. If we have a duty under said regulations to complain of defects, the complaint is deemed to be on time if it is lodged with the Supplier within 14 working days after delivery of the goods, in the case of obvious defects, or within 14 days after a hidden defect has been discovered or could have been discovered by due inspection.

(4) The Supplier shall remedy any defects in supplies or services notified to him by us during the warranty/guarantee period, which includes failing to meet guaranteed data and the absence of warranted specifications and quantities, on our request without undue delay and free of charge. This includes all ancillary costs, repair or replacement of defective components, which is at our sole choice, without prejudice to any further or other claims in law, and, more particularly, the right to rescind, demand a reduction of the price and/or damages.

(5) Should the Supplier fail to meet his guarantee or warranty obligations within a reasonable respite set by us, due to fault on his part, we may have the measures necessary to remedy the defect be carried out by ourselves or by third parties, at the Supplier's risk and expense, without prejudice to his warranty or guarantee obligations. In urgent cases, we may remedy defects ourselves, or engage a third party to do so at the Supplier's expense, having consulted the Supplier. Where required to avoid disturbing production or if there is a risk of exceptionally high losses, we may remedy minor defects ourselves without consulting the Supplier beforehand and without prejudice to the Supplier's guarantee or warranty obligations.

(6) The warranty period is 36 months unless explicitly agreed otherwise in writing with the Supplier, or a longer warranty period is stipulated by law for the product to be supplied by the Supplier. The warranty period begins no earlier than the date when the goods have been handed over to us or to the third party specified by us, at our designated delivery address or point of use. If acceptance procedures are required, the warranty/guarantee period begins on the date of acceptance as stated in our written declaration of acceptance. The warranty periods shall be extended for supplied parts by the duration that the defective item cannot be used in the intended manner on account of the defect. In the event of subsequent fulfilment (*Nacherfüllung*), the original warranty period shall begin anew for the replacement or newly delivered parts.

(7) Acknowledgement of receipt or acceptance of supplied items does not release the Supplier from his warranty obligations, even if we are aware of a defect.

(8) Approval of drawings submitted to us by the Supplier does not release the Supplier from his warranty obligations.

(9) The Supplier will indemnify us against any and all claims, on whatever grounds in law, which third parties may bring against us based on defects of the Supplier's products, and will reimburse our necessary costs incurred in asserting our rights, including but not limited to costs of reasonable legal representation. The afore-said reimbursement also includes the costs of any precautionary recall campaign insofar as such campaign is in our customers' interests or to protect third parties according to our due discretion. The Supplier has to reimburse us for the costs of such recall campaign even after expiry of the warranty period, if we have carried out the recall due to a respective directive issued by public authorities or in order to prevent risks to the life and health of product users or external third parties ("*innocent bystanders*").

(10) The Supplier may not alter the goods once contracts are signed or during the delivery period, even the most minor changes, and even if our specifications, dimensions, analyses, formulae, production methods etc. as prescribed and/or agreed with the Supplier in each case remain unchanged. No such variations may be made until we have given our consent in writing. Should the Supplier fail to meet these obligations through fault on his part, he will be liable for all our costs and those of third parties incurred in examinations, obtaining expert opinions, additional calculations, reprocessing, replacement supplies etc.

(11) The Supplier will also insure himself against all product liability risks with sufficient cover and furnish proof of that insurance to us on demand.

## Section 7 Third-party rights

(1) If royalties are payable for contractual use of the supplied item, also in combination or interaction with other items, these royalties shall be borne by the Supplier.

(2)The Supplier warrants that all goods supplied – also in combination or interaction with other items – are free of intellectual property rights of third parties and, in particular, that neither the supplies or services and/or using the goods supplied infringe any patents or other third party intellectual property rights within the Federal Republic of Germany.

(3)If third-party intellectual property is infringed by delivery or performance by the Supplier, the Supplier is obliged first and foremost to ensure that the infringement is remedied, either by procuring the rights or by modifying the supplied item or by supplying a modified item, providing this is reasonable and acceptable for us.

(4)Not affecting sub-section (3) above, the Supplier will indemnify us against claims by third parties for any breaches of intellectual property rights and will bear any and all costs we incur on this account. This afore-said obligation does not apply if we conclude agreements with the third party in respect of such claims, in particular if we conclude a settlement agreement, without the Supplier's consent.

(5)Sub-sections (1) – (4) of this Section 7 shall apply accordingly for such countries to which we export the goods delivered to the Supplier's knowledge.

## **Section 8 Invoices and payments**

(1) Invoices shall be issued no earlier than the date on which the product, including all contractually relevant documents, is delivered. Invoices shall be issued in duplicate, with the first and second copy being clearly marked as such. Invoices must be sent separately by post; they may not be enclosed with the goods.

(2) Invoices must correspond to our order in their wording and as regards the numbering of the goods. Any additional services and supplies must be separately itemised in the invoice with a reference to our respective prior written order.

(3) Unless otherwise agreed, payments shall be made within 60 days net cash or within 30 days with deduction of a 2% discount, provided that we have no complaints about the delivery or service performed. The applicable criterion for the term of payment is the date of our receipt of the proper invoice and all requisite documents (e.g. material inspection certificate). Delays in payment due to the Supplier failing to issue invoices in accordance with this Section 8 are the responsibility of the Supplier.

(4)Even if we were aware, at the time of paying the purchase price, that the supplied goods are defective, settlement of the invoices may not be construed to mean that we waive any claims arising from the goods being defective.

(5)We may set off amounts due to the Supplier against any amounts due to our affiliated companies. The Supplier may not set off his own claims unless his counterclaims are legally established, are undisputed or are acknowledged by us. He may not exercise any right of retention unless his counterclaim is based on the same contractual relationship.

(6)In the case the purchase price for an item supplied has to be calculated according to its weight, the weight established by us at the delivery point shall be the relevant criterion for the invoice amount.

(7)The Supplier may not, without our prior consent in writing (which we will not refuse unreasonably) assign his claims against us to any third parties or engage any third parties to collect them. If the Supplier for his own part is supplied subject to extended reservation of title (verlängerter Eigentumsvorbehalt), our consent for the purposes of the preceding clause is deemed to be given. Should the Supplier in violation of sentence 1 hereof, assign his claims to a third party without our consent, that assignment will be binding nonetheless, although we may pay, in our own election, the Supplier or the third party with exonerating effect.

## **Section 9 Goods, drawings and other documents supplied by us**

(1)The Supplier is liable to us should any items we provide to him be lost or damaged. The Supplier should inform us without undue delay should any of such items be impaired in law or fact.

(2)All processing of materials provided to the Supplier by us shall be performed for us. All such materials remain our property while being worked and processed. The parties agree that we shall acquire co-ownership in the products made using materials or components provided by us in proportion of the value of the items supplied by us to the total value of the product. The same applies should we lose title by way of mixing or mingling.

(3)All documents, drawings, samples, etc. that we provide to the Supplier for production of the delivery items shall remain our property; we reserve our copyright and other intellectual property rights. Such goods, drawings and documents, along with all copies thereof, shall be handed over to us without delay at our request, and of the Supplier's own accord if no order ensues, unless the Supplier has a justified interest in retaining individual documents. Sentences 1 and 2 above shall apply accordingly for the drawings and other documents that are drafted by the Supplier in accordance with our special instructions.

(4)The Supplier shall treat the documents referred to in sub-section (3) above as well as all other received information relating to the order or to the execution of the order as business secrets and shall treat them accordingly as confidential. We shall treat any documents and information that we receive from the Supplier in connection with the order or execution of the order as business secrets if we are explicitly notified of the need to keep them secret. The duty to observe secrecy shall not apply if the content of the documents are facts in the public domain or which later enter the public domain without this being due to a breach of duty by the Party to maintain secrecy.

(5)If we incur losses due to the Supplier acting in breach of his duties as stipulated in sub-sections (2) – (4) above, the Supplier shall compensate us for such losses.

(6)The Supplier shall provide us, with his offer, with any essential drawings and documents that are required to discuss the technical details of the goods to be delivered. However, such discussion or other form of involvement in design work on our part shall not release the Supplier from his exclusive responsibility for the product or from any ensuing warranty or other obligations.

(7)The Supplier shall provide us with all drawings and documents that we or our customers require to install, operate, service, maintain or repair the supplied item, in due time – at the latest on delivery – of his own accord and free of charge.

## **Section 10 Quality assurance and control**

(1) The Supplier must implement an appropriate state-of-the-art quality assurance system, and must provide us on request with proof of such implementation. In case we should deem this to be necessary, the Supplier shall conclude with us a quality assurance agreement to this effect.

(2) If quality checks have to be performed as regards the delivery items that go beyond the statutory requirements in Section 377 HGB (German Commercial Code), the personal costs of acceptance shall be borne by us and the material costs by the Supplier unless explicitly agreed otherwise.

(3) The date of completed production shall be stated in a binding manner no later than one week before acceptance procedures are conducted.

(4) If, in the case of quality checks pursuant to sub-section (2) above, additional visits by the Quality Officer (MikroPul and/or third parties) are necessary due to established defects, the personal costs for such checks shall be borne by the Supplier, too. The same principle shall apply if the supplied item is not presented to the Quality Officer on the date specified in sub-section (2) above.

## **Section 11 Shipment, correspondence**

(1) We are 'SLVS Waiver Customer' (*SLVS-Verzichtskunde*) for all deliveries in Europe having a maximum goods value per consignment of € 512,000. The Supplier shall therefore inform any transport company commissioned for shipment that we are a 'SLVS Waiver Customer' and that we expressly prohibit any SLVS insurance from being taken out in our name by the transport company. We have transport insurance coverage to the aforementioned amount if we are obliged under the agreed delivery term (the respective current version of Incoterms) to procure such cover. If a transport company bills us SLVS expenses, we have the right to deduct these costs from the Supplier's invoice.

(2) The Supplier shall send us his Annual Supplier's Declaration.

(3) If the costs for transportation have to be borne by us due to a respective agreement with the Supplier, the cheapest way of transportation has to be chosen by the Supplier. Consignments weighing up to 30 kg shall be sent by post or standard parcel service. As regards consignments weighing more than 30 kg the type of shipment specified by us has to be chosen by the Supplier.

(4) Our order number and the order date must always be stated in letters, dispatch notes, invoices and other correspondence. If several orders are made, each order must be treated separately in correspondence.

## **Section 12 Proof of origin, export control**

(1) Unless explicitly agreed otherwise, all orders are exclusively for goods which are products of origin under the European Community's preferential agreements. The Supplier must furnish us with sufficient proof of preference (long-term or individual shipment declarations with details of origin, declaration of origin on the EUR-MED invoice, EUR-MED product marketing certificate, Form A) upon delivery at the latest, and will also be bound to prove the details of origin as stated above upon request by presenting information sheets INF 4 confirmed by his competent customs office. Where such proof uses general details of origin, e.g. 'European Community', the country of origin (e.g. 'The Netherlands') must also be declared.

(2) Should the Supplier vary from his declaration while a long-term Supplier's Declaration is in force, he agrees to notify the changes, in addition to the references on his invoice, also by way of informing our customs/foreign trade department in writing (double obligation to report). We would point out here that Suppliers' Declarations which include exclusion clauses are not longer allowed since June 30th, 2004, and we do not accept them, because they are not covered by Regulation 1207/ 2001. For the present purposes, 'exclusion clauses' means any addition to the prescribed wording of the Supplier's Declaration which limits the force of the declaration by referring to subsequent individual documents (delivery notes, invoices etc.) and any designations they may contain or not contain.

(3) No goods may be supplied which are not products of origin under any preferential treaty of the European Community without our prior consent in writing.

(4) Over and above the alternative obligations in sub-sections (1) – (3) above, the Supplier is also obliged to produce certificates for all goods to be supplied (certificates of origin, long-term and individual Supplier's Declarations without details of origin, additions to the declaration of origin on invoices) showing that the goods are of non-preferential origin. Where this proof gives general details of origin, such as 'European Community', the national origin, such as 'Kingdom of the Netherlands (European Community)' must also be given.

(5) All proof of origin must be submitted automatically at the Supplier's expense, upon delivery at the latest.

(6) The Supplier agrees to inform us expressly in writing under separate cover and in relevant business documents when entering into the contract about any consents required under the German foreign trade law (AWG), the weapons of war control law (KrWaffKontrG) or the enacting law to the chemical weapons convention (CWUAG). He must also inform us, stating specific list positions, whether goods appear in the EC dual-use regulation with schedules I to IV (EC Regulation 1334/2000) or in the export list Part I, sections A and C of the foreign trade regulations (AWV). He must indicate whether goods or parts thereof (stating the percentage of value of the goods to be supplied) come under the US Commerce Control List CCL (stating the specific Export Control Classification Number ECCN) or the US Export Administration Regulations EAR (classification EAR99). Relevant business documents include in particular contracts for sale, confirmations of orders, delivery notes, packing lists, pro forma invoices, invoices and notices of dispatch.

(7) We would point out, expressly, that we reserve the right to claim damages from the Supplier in civil law should the provisions of sub-sections (1) – (6) above as an integral part of our purchase contract not be met comprehensively. The Supplier shall be liable in particular for all losses caused by failing to submit proofs of origin in time or at all or by false statements made in those documents.

### **Section 13 Applicable law, place of jurisdiction, place of performance, severability**

(1) These terms and conditions and all legal relations between us and the Supplier are governed by the laws of the Federal Republic of Germany, under exclusion of the Vienna Convention on the International Sale of Goods (CISG).

(2) If the Supplier is a registered merchant or – without being registered – has full commercial capacity within the meaning of the German Commercial Code, the sole place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Cologne, Germany. However, we also have the right to sue the Supplier at any other place of competent jurisdiction.

(3) The place of performance for all contractual obligations is Cologne, Germany. Should any provision of these terms and conditions, or any provision in other related agreements be or become invalid or unfeasible, this shall have no impact on the validity of all other provisions or agreements. The invalid or unfeasible provision shall be replaced by one that comes closest to the business intentions of the Parties had when concluding the affected agreement. The same principle shall apply in the case of a contractual loophole.