

General terms and conditions of pro-micron GmbH

I. Scope

1. Our general terms and conditions only apply to contractors, legal persons governed by public law and special trusts under public law.
2. All of our deliveries and services are subject exclusively to these general terms and conditions. Other general terms and conditions are not subject terms of contract even if we do not expressly reject them.

II. Quotation and order confirmation

1. Our quotations are binding, as far as they are not in particular cases expressly specified as subject to confirmation. If the order is placed subject to changes in the quotation, the contract only becomes effective through our written confirmation of the order, whose content is then decisive.
2. As far as drawings, drafts, samples and other documents - also in electronic form – are transferred within the framework of the offer, we reserve the right of ownership and intellectual property rights. Such documents may not be disclosed to third parties and are to be returned immediately upon request.

III. Price and payment

1. Our prices are ex works plus packaging and the applicable statutory VAT.
2. Payment must be made only to a bank account indicated in our invoice.
3. Rights of retention of the customer are excluded. This does not apply as far as the right of retention is based on the same contractual relationship.
4. The right of the customer to offsetting exists only insofar as the claim is undisputed or legally established.

IV. Delivery date and delivery

1. In the context of our quotation we provide only estimated delivery dates, which are based on the assumption that all technical and commercial issues are already settled at the time of the offer (estimated delivery date). We set the actual date of delivery on the basis of the order and confirm it in writing (binding delivery date). Since the confirmation of the binding delivery date presupposes that all technical and commercial issues are settled, the binding delivery date may differ from the estimated date of delivery, if such issues had still not been clarified at the time of our quotation.
2. If a change in the object of performance is agreed after the confirmation of a binding delivery date, the mandatory delivery date confirmed in writing with the change applies.
3. As far as the adherence to the delivery date depends upon the cooperation of the customer, in particular supplies, and this has not been complied with, the delivery time is extended appropriately.

4. Compliance with agreed delivery dates is always subject to delivery by our suppliers. If delays are foreseeable, we will inform the customer about this immediately. Taking due account of the delay in delivery, a new delivery date is set.
5. If non-observance of the delivery time is attributed to force majeure, labour disputes or other events beyond our control, the delivery time is reasonably extended. We will immediately communicate the beginning and end of such circumstances.
6. Partial deliveries are allowed, and will be charged with their execution.

V. Transfer of risk and Incoterms

1. Unless otherwise agreed in individual cases, deliveries are always ex works - EXW (Innovapark 20, D-87600 Kaufbeuren) - pursuant to the current version of the INCOTERMS. The transfer of risk takes place accordingly with delivery at the appointed place.
2. If requested by the customer, we shall cover the delivery with transport insurance. The customer shall bear the costs of this.

VI. Reservation of proprietary rights

1. We reserve the right of ownership of the delivery items (reserved goods) until full payment of all existing claims in the framework of the business relationship.
2. In the case of resale of reserved goods, the customer assigns their future claims from the resale to the sum of the entire amount already invoiced by us (incl. sales tax). We undertake, however, not to collect the claim, as long as the customer meets their payment obligations. However, if the customer becomes in default of payment and does not fulfil their payment obligations after our written reminder, we reserve the right to collect the claim. In this case, the customer undertakes to surrender the necessary information for the collection.
3. Processing and alteration of the goods by the customer are always performed for us.
4. If our ownership of the goods expires as a result of mixing, we acquire co-ownership of the new item. Our co-ownership share shall be determined according to the ratio of the value of the reserved goods to the other mixed items. If one of the mixed items of the customer can be regarded as the principal thing in the sense of § 947, para 2 BGB, it is already agreed that the customer transfers co-ownership to us corresponding to the aforementioned value ratio.
5. The customer may neither pledge reserved goods nor assign them as collateral. The customer must immediately notify us of third party access to the reserved goods.
6. The customer shall handle reserved goods with care and insure them against theft, damage, destruction and accidental loss.

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VII. Warranty

1. The warranty rights of the customer assume that they have properly complied with the duties of inspection and complaint in accordance with § 377 HGB. The complaint is to be submitted to us in writing.
2. We will fix at our discretion by repair or replacement any defect present at the time of transfer of risk. The customer is responsible for the detection of the defect.
3. We bear the costs necessary for the supplementary performance. Removal and installation costs are excluded, unless in particular cases the first-time installation was a part of our performance.
4. If the subsequent performance fails or is legitimately denied by us due to disproportionate associated costs, the customer can reduce payment or withdraw from the contract.
5. Customer claims for damages are exclusively based on VIII.

VIII. Compensation for damages

1. Customer claims for damages, regardless for what legal reason, are excluded.
2. This does not apply in the case of intent or gross negligence, with respect to injury of life, body or health.
3. This also does not apply to violation of essential contract obligations. In this case liability is limited to the compensation of the typical, reasonably foreseeable damage insofar as no willful misconduct or gross negligence exists or is liable due to injury of life, body or health.
4. Claims under the Product Liability Act remain unaffected.

IX. Statute of limitations

1. The warranty claims of the customer pursuant to VII. lapse in 12 months.
2. For damages claims pursuant to VIII. the statutory limitation period applies.

X. Software use

1. Insofar as software is included in the scope of delivery, the customer is granted a non-exclusive right to use the delivered software including its documentation. It is allocated for use on the designated delivered item.
2. The customer may copy, revise, or translate the software or convert its object code to source code only to the extent legally permitted (§§ 69a et seq. UrhG). The customer undertakes not to remove manufacturer's instructions - in particular copyright notices - or to change them without our express prior written consent.

3. All other rights to the software and the documentation including the copies remain with us. The granting of sublicenses is not permitted.

XI. Place of fulfilment, place of jurisdiction, applicable law

1. Place of fulfilment for all obligations arising from the contractual relationship is Kaufbeuren.
2. Place of jurisdiction for all legal disputes arising from the business relationship with the customer is Kaufbeuren.
3. For all legal relationships with the customer, the law of the Federal Republic of Germany applies. The application of the UN purchase right (CISG) is excluded.

XII. Severability clause

1. Should a part of the contract or these general terms and conditions be invalid or unenforceable, the effectiveness of the contract or these general terms and conditions shall not otherwise be affected.