

GENERAL TERMS & CONDITIONS of

MikroM Mikroelektronik für Multimedia GmbH

I. Application, conflicting terms and conditions, written form

1. The terms of business and conditions of purchase (hereinafter: General Terms & Conditions) set out below apply to all deliveries and services of MikroM Mikroelektronik für Multimedia GmbH (hereinafter: MikroM). MikroM expressly opposes the terms of business and conditions of purchase of the contracting party.
2. Conditions of the contracting party are only binding to MikroM if and insofar as MikroM expressly approves them in writing. The General Terms & Conditions of MikroM are also valid if MikroM carries out the deliveries unreservedly with knowledge of conditions of the contracting party that are adverse to or deviate from the General Terms & Conditions of MikroM.
3. Agreements deviating from MikroM's General Terms & Conditions can only be made in writing and are valid only for the contract in question and not for following contracts, insofar as this is not explicitly agreed otherwise. This also applies to any amendment of this clause.

II. Offer, conclusion of contract

1. Unless otherwise expressly agreed in writing, offers from MikroM are non-binding and without obligation up until final confirmation of the order. A contract is only effected when MikroM confirms the order in writing or when the goods have been delivered.
2. MikroM does not take any responsibility for errors arising from unclear or incomplete information in the order or in the documents sent. In such cases, the contracting party is required to bear any additional costs incurred.

III. Prices, terms of payment, offsetting, retention, deterioration of financial situation

1. Unless a different price has been expressly agreed upon in writing, the price in accordance with the applicable price list of MikroM in force on the day of conclusion of the contract is valid.
2. All prices are net prices ex works Berlin plus any value-added tax at the statutory rates applicable at the time.
3. Unless otherwise expressly agreed in writing, for first orders, MikroM shall be entitled to only effect deliveries against prepayment.
4. MikroM reserves the right to adjust the prices from the order confirmation according to changes of costs incurred, especially increase of prices for goods and services issued by the supply chain or changes of the currency exchange rate. MikroM will provide evidence for the price adjustment to the contracting party on request.
5. Unless otherwise expressly agreed on the order confirmation in writing, invoice amounts are payable within thirty (30) days of the invoice date without deduction. If payments are made late, further deliveries will be made without special notice and at MikroM's sole discretion against prepayment only.
6. The contracting party is in default of payment if payment has not been made after thirty (30) days from the date of delivery or the date of the invoice. The statutory regulation on occurrence of default or delay (§286 German Civil Code) remains otherwise unaffected. When the contracting party is in default of payment, MikroM is entitled to demand default interest in the amount of eight percent (8%) p.a. above the basic interest rate of the European Central Bank effective at the time of the occurrence of the delay. The enforcement of a higher claim for damages caused by delay remains unaffected.
7. The contracting party is only entitled to rights of setoff or retention if his counterclaims have become res judicata or are recognized by MikroM. Contracting parties which are not merchants are only entitled to a right of retention with regard to counterclaims

which have arisen from the same contractual relationship.

8. If the contracting party does not meet the agreed payment deadlines, if the contracting party is in breach of other contractual agreements, or if after acceptance of the order MikroM becomes aware of facts that allow reasonable doubt about the creditworthiness of the contracting party, MikroM reserves the right to demand full payment or relevant sureties before the delivery, and, following unsuccessful setting and expiry of a reasonable deadline, to withdraw from the contract or demand compensation. Evidence of substantial deterioration in capital exists when, in the opinion of a prudent merchant, negative information has been furnished by a bank, a credit enquiry agency, or a company in a business relationship with the contracting party. If the delivery has already been made, the invoice amounts in question will be due immediately regardless of agreed terms of payment. Moreover, MikroM can prohibit the resale of the goods delivered under reservation of title, demand their return, or the transfer of indirect property at the cost of the contracting party and, where applicable, withdraw a direct debit authorization.

IV. Shipment, delivery periods and dates, delay, force majeure, partial delivery

1. Shipment is made ex works from Berlin (EXW Berlin).
2. Unless otherwise expressly agreed in writing, the delivery periods and dates named by MikroM are non-binding. Insofar as binding delivery periods are agreed, they begin on the date of the confirmation of the order, but not before receipt of any agreed deposits and not before explicit clarification of all details of the order. They are considered as observed with the notification of readiness to dispatch if through no fault of MikroM the goods cannot be dispatched on time.
3. Agreed periods and dates are extended – without affecting MikroM's rights due to delay of the contracting party – by the period of time in which the contracting party is in arrears in terms of his obligations towards MikroM.
4. In the case of non-binding delivery periods and dates, the contracting party can only withdraw from the contract due to the delayed delivery if the non-binding delivery period is exceeded by more than three (3) weeks and if the contracting party declared in writing that it is not willing to abide by the contract by setting a period of another three (3) weeks.
5. Cases of force majeure or other events over which MikroM has no influence and which render delivery considerably more difficult or impossible, including without limitation breakdowns, damages, or loss in transit, strikes, lawful lockouts, official measures, failure to deliver, or incorrect or delayed delivery on the part of the supply chain of MikroM, entitle MikroM to defer the delivery by the duration of the hindrance and a reasonable start-up period or to withdraw from the contract due to the non-fulfilled part. Insofar as the contracting party cannot reasonably be expected to accept the delay, it must send MikroM without delay a written demand for a statement whether MikroM wants to withdraw from the contract or deliver within a reasonable deadline. If MikroM does not provide this statement within a reasonable period, the contracting party may withdraw from the contract as long as the contract has not been at least partially fulfilled by MikroM.
6. If MikroM fails to deliver for reasons MikroM is responsible for, the contracting party can set MikroM a reasonable extension with the indication that it will refuse to accept the object of purchase once this deadline has expired. Upon unsuccessful expiry of the final deadline the contracting party is entitled to withdraw from the contract with a written explanation or to demand compensation due to non-fulfillment. The contracting party can, however, demand compensation for damages caused by delay or non-fulfillment only if a willful or gross breach of duty by MikroM or legal representatives or employees of MikroM has occurred, in the case of ordinary negligence, however, up to the amount of the typical and foreseeable damage only when a breach of substantial obligations endangers the purpose of the contract.

7. MikroM reserves the right to make construction or design modifications that can be attributed to the improvement of the technology or to legislative requirements during the delivery time as long as the goods are not materially changed and the contracting party can reasonably be expected to accept them.

8. MikroM is entitled to make partial deliveries. Each partial delivery can be invoiced separately by MikroM.

V. Extended reservation of title

1. MikroM retains ownership of the goods (goods subject to reservation of title clause) until all claims of the business relationship including claims which may arise in the future from contracts or contracts entered into simultaneously or at a later date are settled. This also applies when separately indicated claims are paid.

2. The contracting party is entitled to resell the goods subject to the reservation of title clause in the ordinary course of business. The contracting party is not entitled to other disposal of the goods.

3. The contracting party relinquishes to MikroM herewith all accounts receivable, including all ancillary rights that arise from the resale. Until the authorization is revoked at the discretion of MikroM, the contracting party remains authorized to collect the accounts receivable in its own name as long as the contracting party duly fulfills its obligations to MikroM. MikroM will only utilize the right to revoke the authorization in the cases named under subparagraph III 8.

4. On MikroM's demand the contracting party is obliged – as long as MikroM does not inform the customer of the contracting party directly – to inform the customer of the assignment to MikroM without delay and to furnish MikroM proof of the notification as well as comprehensive information with regard to the assigned accounts and the person of the garnishee. The contracting party is obliged to give MikroM all the particulars required for the collection of the account receivable and to deliver the supporting documents to MikroM.

5. In the case of distraints or other encroachments of third parties, MikroM is to be informed in writing without delay.

6. In case of payment default or any other behavior of the contracting party in breach of the contract or in the case that MikroM becomes aware of circumstances that give rise to reasonable doubt about the creditworthiness of the contracting party, MikroM is entitled to prohibit the resale of goods subject to the reservation of title clause, to demand their return or the concession of indirect ownership to MikroM at the cost of the contracting party, to revoke a direct debit authorization and/or demand the payment of the amounts collected by the contracting party or, if the goods have been resold but not paid for or only paid for in part, to demand payment directly from the customer of the contracting party. In the exercising of these rights a withdrawal from the contract only takes place if this is expressly declared by MikroM in writing.

7. MikroM is entitled to demand return of the objects for which MikroM has reservation of title if MikroM becomes aware of circumstances that appear to endanger the fulfillment of their claims by the contracting party. Against this return claim a right of retention can only be asserted in the framework of the above mentioned subparagraph III 7. The contracting party declares herewith his consent that, for this purpose, the persons commissioned by MikroM to collect can enter and drive onto the property where the objects are found.

VI. Warranty, liability

1. All information about MikroM's products, in particular the diagrams, specifications and performance figures in MikroM's offers and catalogues, are average values to be seen as approximations. This information does not represent the receipt of a warranty or a procurement risk, but rather only descriptions and characterizations of the goods. The same applies to information and advice with regard to products of MikroM. Unless limitations for permissible deviations have been expressly established and described as such in the confirmation of the order, the deviations customary in the business (allowable variations) are permissible.

2. For software originated by MikroM the 'End User License Agreement' of MikroM applies. For third-party software, which is part of the goods, MikroM takes no liability and warranty at all.

3. When goods have been sold as downgraded or used goods, the contracting party does not have any claims for possible defects. §444 German Civil Code remains unaffected.

4. Upon receiving the goods, the contracting party is obliged to carefully examine them for completeness and regularity without delay, even if a sample has been provided beforehand. The delivery will be considered as approved if written notice of defects is not received within five (5) working days of arrival of the goods at their destination or, if the defect was not noticeable in an ordinary inspection, within five (5) days of its discovery.

5. The contracting party is obliged to give MikroM the opportunity to inspect the defects. If the contracting party refuses to do so, MikroM is also discharged from any liability for defects.

6. When the notification of defects is justified, MikroM will – at MikroM's sole discretion – provide warranty through repair or replacement. If the repairs or the replacements fail, the contracting party can demand a reduction of the purchase price or a rescission of the contract. In case of rescission of the contract, the contracting party is not entitled for any claims of damages due to the defects.

7. MikroM's liability, for whatever legal justification, is limited to intent and gross negligence. In the case of ordinary negligence, MikroM is liable only when a violation of essential obligations endangers the purpose of the contract and only for the typical and foreseeable damage. This limitation of liability does not apply i) to damages resulting from the lack of a warranty, when it was the warranty that should have prevented the occurrence of damage, ii) when primary duties of the contract or duties essential to the contract were violated by MikroM, iii) to demands arising from the product liability law, iv) to damages from injury to life, body, or health.

8. Goods acknowledged to be defective will only be taken back with written agreement provided by MikroM. The goods are to be returned intact and in their original packaging (complete, undamaged original packaging, operating instructions, complete packing material, etc.). The contracting party shall have to create backup copies of its data stored on the goods in question. Any liability for the loss of data and consequential damages shall not be accepted by MikroM. Goods sent back to MikroM postage unpaid will not be accepted and will be returned to the sender at the sender's own cost. The contracting party must provide proof of the shipping costs, which will only be reimbursed when the notification of defect is justified.

9. Claims arising from a defect become statute-barred after one (1) year from delivery of the item.

VII. Compensation of expenditures caused by non-acceptance of goods

1. If the contracting party does not accept delivery of the goods in parts or full, MikroM is entitled - at MikroM's sole discretion - to demand completion of the contract or expense allowance in the amount of a flat rate of twenty-five percent (25%) of the net price of the goods plus any shipping costs already incurred.

VIII. Changes

1. MikroM reserves the right to change these General Terms & Conditions at any time. Changes will take effect on the date announced. MikroM will send the contracting party the changed General Terms & Conditions in due time before they take effect. If no date of entry into force is announced, the changes will become effective at the time the contracting party received them.

IX. Protection of industrial property

1. The contracting party acknowledges MikroM's patent rights insofar as these exist, as well as MikroM's copyrights and other trademark rights on the goods sold by MikroM. In particular, the

contracting party is prohibited to make any reproductions going beyond the purpose of the contract, build unauthorized copies or imitations, or trade reproduced, copied, or imitated goods.

2. The analysis of structure and function of software or hardware originated by MikroM (so-called 'reverse engineering') is not permitted without MikroM's written agreement.

X. Export, delivery to foreign contracting parties

1. German law also applies exclusively when MikroM makes deliveries abroad and to foreign contracting parties. The validity of the international trade law of the United Nations (CISG – Convention on Contracts for the International Sale of Goods) is expressly contracted out.

2. When the contracting party exports goods to areas outside the Federal Republic of Germany, MikroM does not accept any liability if MikroM's products infringe upon the trade mark rights of a third party. The contracting party of MikroM is obliged to compensate for damages caused by the contracting party, when the contracting party exports goods that were not expressly delivered by MikroM to be exported.

3. The export of MikroM's goods to certain countries may possibly violate foreign trade and payment law and/or statutory export bans. MikroM is hereby informing its contracting parties that they must check the permissibility of such delivery themselves and at their own responsibility. The contracting party is obliged to indemnify MikroM against any type of damage incurred through an illegal delivery the contracting party is responsible for.

XI. Place of performance, place of jurisdiction

1. The place of performance is Berlin/Germany for both the contracting party and MikroM. The place of jurisdiction – including terms of actions to assert claims concerning payments of checks or bills of exchange – is Berlin/Germany, when the contracting party is a merchant or residing abroad.

2. This English version of MikroM's General Terms & Conditions is a true and correct translation of the original German document. In case of any court actions, the German original will be used.

XII. Final provisions

1. To comply with the required written form when concluding and performing the contracts entered into by MikroM, declarations sent by fax or e-mail are also sufficient.

2. Insofar as not agreed otherwise, the transfer of rights and obligations from this contract by the contracting party to third parties requires MikroM's prior written consent. MikroM will only refuse to give this consent for good cause.

XIII. Severability clause

1. If a provision in these General Terms & Conditions is or becomes invalid, it shall not affect any part of the remaining contract. An invalid provision is to be replaced by a valid provision that approximates the commercial purpose of the agreement and the presumed intent of the parties involved. The same applies to regulation gaps in the contract that cannot be filled by interpretation.

MikroM Mikroelektronik für Multimedia GmbH
Dovestr. 1, 10587 Berlin, Germany
District court Berlin/Charlottenburg, HRB 68592

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