

MICOTROL INTERNATIONAL

General Terms of Trade

I. General Conditions

1. The scope of the supplies or services (hereinafter called Supplies) shall be defined by the written declarations of both parties to the contract. General terms and conditions of the Purchaser shall apply only where expressly accepted in writing by MICOTROL. Offers are subject to alteration. All orders and agreements will only become binding through MICOTROL's written confirmation or when dispatching the Supplies.
2. For cost estimates, drawings and other documents (hereinafter called Documents), MICOTROL reserves all rights, right, title and interest in the property and the copyright. Such Documents may not be made available to third parties without the prior consent of MICOTROL.
3. Partial Supplies shall be permissible where they are appropriate and can be reasonably expected by the Purchaser.

II. Technical Data

Technical data, e. g. on dimensions, weights and performance numbers, illustrations and drawings are binding only within the scope of common technical tolerances, unless they are explicitly called binding.

III. Prices and Terms of Payment

1. Prices shall be ex works and shall exclude packing and the sales tax payable under the applicable law.
2. All Supplies shall be paid cash before delivery by the Purchaser.
3. If MICOTROL has undertaken the assembly or erection, the Purchaser shall bear all required incidental costs in addition to the agreed contract price unless otherwise agreed.
4. Payments shall be made free at MICOTROL's paying office.
5. The Purchaser may set off only those claims that are undisputed or have been finally determined in a legally binding manner.

IV. Retention of Title

1. Notwithstanding delivery and the passing of risk in the Supplies, or any other provisions of these conditions, the property in the Supplies shall not pass to the Purchaser until MICOTROL has received payment in full of the price of the Supplies and all other Supplies agreed to be sold by MICOTROL to the Purchaser for which payment is then due.
2. MICOTROL shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the Supplies in which title remains vested in MICOTROL.
3. Until such time as the property in the Supplies passes to the Purchaser, the Purchaser shall hold the Supplies as MICOTROL's fiduciary agent, and shall keep the Supplies properly stored, protected and insured. Until that time the Purchaser shall be entitled to resell or use the Supplies in the ordinary course of its business, but shall account to MICOTROL for the proceeds of sale or otherwise of the Supplies including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the Purchaser and third parties.
4. If the Supplies are processed or reshaped by the Purchaser and if processing is done with goods that MICOTROL has no property in, MICOTROL shall become co-owner of the Supplies. The same shall apply if MICOTROL's Supplies are completely reshaped and mixed with other goods.
5. If third parties take up steps to pledge to otherwise dispose of the Supplies, the Purchaser shall immediately notify MICOTROL in order to enable MICOTROL to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the Purchaser fails to do so in due time he will be held liable for any damages caused.
6. MICOTROL shall on demand of the Purchaser release any part of the collateral if the value of the collateral held in favor of MICOTROL exceeds the value of the claims being secured. It is to MICOTROL's decision to release those parts of the collateral suitable for him.
7. In cases of fundamental non-performance of contractual obligations by the Purchaser, MICOTROL shall be entitled to take back the Supplies. The Purchaser shall be obliged to return the purchased Supplies. The taking back, the assertion of the retention of title or the seizure of the Secured Supplies by MICOTROL does not mean termination of the contract except if expressly stated by MICOTROL.

V. Time for Delivery and Delay

1. Observance of the stipulated time for delivery is conditional upon the timely receipt of all documents, necessary permits and releases, especially of plans to be provided by the Purchaser, as well as fulfillment of the agreed terms of payment and other obligations by the Purchaser. Unless these conditions are fulfilled on time, the time for delivery will be extended accordingly except where MICOTROL is responsible for the delay.
2. If non-observance of the time for delivery is due to force majeure such as mobilization, war, riot or similar events, e. g. strike, lockout or other non-predictable or grave operational breakdowns such time shall be extended accordingly.
3. If MICOTROL is responsible for a delay in delivery, the Purchaser who can establish credibly that he suffered a loss from such delay may claim agreed compensation of 0.5 % for every completed week of delay but in no event shall the aggregate of such compensation exceed a total of 5 % of the price of that part of the Supplies which, because of the delay, could not be put to the intended use.

4. Purchaser's claims for compensation which exceed the limits specified in para. V. 3. shall be excluded in all cases of delayed delivery even after expiry of an extension of time that may have been granted to MICOTROL. This exclusion shall not apply where in cases of willful misconduct or gross negligence there is a legally binding liability on the part of MICOTROL. No change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected after the expiry of an extension granted to MICOTROL that did not result in delivery.
5. If dispatch or delivery is delayed at Purchaser's request by more than one month after notice was given of the readiness for dispatch, the Purchaser may be charged storage costs for each month thereafter to the amount of 0,5 % of the price of the supplied goods but in no event shall the aggregate storage charges exceed a total of 5 % of the price. The parties to the contract are at liberty to furnish proof of higher or lower storage costs.

VI. Transfer of Risk

1. Even where "carriage paid" delivery has been agreed, the risk of damage to or loss of the Supplies shall pass to the Purchaser as follows:
 - a) in the case of Supplies to be delivered otherwise than at MICOTROL's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Supplies, the time when MICOTROL has tendered delivery of the goods. At the Purchaser's request and expense, Supplies shall be insured by MICOTROL against the ordinary risks of transport.
 - b) in the case of Supplies to be delivered at MICOTROL's premises "ex works" (Incoterms 1990), at the time when MICOTROL notifies the Purchaser that the goods are available for collection, at the latest when the Supplies are actually collected by the Purchaser
2. If the dispatch, the delivery, the beginning or completion of assembly or erection, the taking over into Purchaser's own service or the trial run is delayed for reasons within the Purchaser's responsibility, or if the Purchaser has failed for other reasons to accept delivery, the risk shall pass to the Purchaser.

VII. Taking Delivery

Deliveries, even with minor defects, have to be accepted by the Purchaser.

VIII. Warranty

- For defects which include the absence of expressly warranted characteristics, MICOTROL shall be liable as follows:
1. MICOTROL shall, at his option and expense, repair, replace or newly provide any parts or services whose usefulness is impaired more than insignificantly within 6 months from the date of the transfer of risk - regardless of the period of operation - owing to circumstances that existed before the transfer of risk.
 2. Warranty claims are subject to a limitation period of 24 months which starts at the date of the transfer of risk. Notice in writing shall be given to MICOTROL immediately after discovery of the defect.
 3. In case of notification of a defect, Purchaser's payments may be withheld in reasonable proportion to the notified defect. If the contract pertains to the conduct of a Purchaser's business, the Purchaser can withhold payments only if the legitimacy of the asserted complaint can be established beyond doubt.
 4. MICOTROL shall be given adequate time and opportunity to remedy the defect. If it is refused these, MICOTROL shall have no liability for the defect.
 5. If an adequate extension granted to MICOTROL expires without the defect being remedied, the Purchaser shall have the right to demand cancellation of the contract or a reduction of the purchase price.
 6. The warranty does not cover natural wear and tear or damage arising, after the transfer of risk, from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. The warranty does not cover modifications or repairs carried out improperly by the Purchaser or by third parties.
 7. The warranty period for repairs or replacement Supplies (of goods or services) shall be 24 months. It shall be the later of: (1) 12 months from the date of repair or replacement; or (2) the remaining length of the original warranty period for the Supplies. For those parts which cannot be put to the intended use because of the interruption of service, the warranty period shall be extended by the period of service interruption caused by the repair or replacement supply.
 8. The periods specified in paras. 1., 2. and 7. shall not apply where longer periods are provided by law according to § 638 BGB (German Civil Code).
 9. Except as provided above, any other warranty claims of the Purchaser against MICOTROL and MICOTROL's agent shall be excluded. However, clause XI. (Further liability) shall remain unaffected

IX. Industrial Property Rights and Copyright

1. If a third party, because of an infringement of an industrial property right or copyright (hereinafter called Property Rights) by products furnished by MICOTROL and used in conformity with the contract, asserts legitimate claims against the Purchaser, MICOTROL shall be liable to the Purchaser as follows:
 - a) At his own option and expense, MICOTROL shall either obtain a right to use the Supplies, modify the Supplies so as

not to infringe the Property Rights or replace the Supplies. If this is not possible to MICOTROL on acceptable terms, it shall have to take back the product and refund the purchase price.

- b) MICOTROL's aforesaid obligations shall exist only on condition that the Purchaser immediately notifies MICOTROL in writing of the claims asserted by the third party, that he does not acknowledge an infringement and that all countermeasures and settlement negotiations are reserved to MICOTROL. If the Purchaser stops using the product to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Property Rights.
2. Claims of the Purchaser shall be excluded if he is responsible for an infringement of Property Rights.
 3. Claims of the Purchaser shall also be excluded if the infringement of Property Rights was caused by specific demands of the Purchaser, by a use of the product not foreseeable by MICOTROL or by the product being altered by the Purchaser or being used together with products not provided by MICOTROL.
 4. Further claims against MICOTROL shall be excluded. However, Clause XI. (Further liability) shall remain unaffected and so shall be Purchaser's right to terminate the contract.

X. Impossibility of Performance, Contract Adaptation

1. If it is impossible for MICOTROL to carry out the Supplies for reasons for which it is responsible, the Purchaser shall be entitled to claim damages but the Purchaser's claim for damages shall be limited to 10 % of the value of that part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This shall not apply where in cases of willful misconduct, of gross negligence or of initial impossibility, there is a legally binding liability. No change in the burden of proof to the detriment of the Purchaser is involved. Purchaser's right to terminate the contract shall remain unaffected.
2. Where unforeseeable events as described in Clause V, para. 2., substantially change the economic importance or the contents of the Supplies or considerably affect MICOTROL's business, the contract shall be adapted accordingly with due regard to the principle of good faith. Where this is not economically reasonable, MICOTROL shall have the right to terminate the contract. If MICOTROL wants to make use of this right of termination, he shall notify the Purchaser in writing immediately after becoming aware of the significance of the event. This shall apply even where at first an extension of the delivery time had been agreed with the Purchaser.

XI. Further Liability

1. All advice concerning utilization is given to the best knowledge of MICOTROL. The Purchaser is obliged to verify suitability and applicability of the advice concerning the intended use. The Purchaser is responsible for suitability and intended usage of MICOTROL's products. MICOTROL shall not be liable for advice concerning utilization.
2. Except as provided herein, any other claims for damages of the Purchaser shall be excluded regardless of whether they are based on positive breach of contractual obligations, violation of obligations in contract negotiations, breach of warranty, tort or other legal theory. This exclusion shall not apply where e.g. under the product liability law or in cases of willful misconduct, of gross negligence, of the absence of warranted characteristics or of the fundamental non-performance of contractual obligations, there is a legally binding liability. However, liability for damages arising from the fundamental non-performance of contractual obligations shall be limited to the foreseeable damage normally covered by a contract except in cases of willful misconduct or gross negligence. This limitation does not imply a change in the burden of proof to the detriment of the Purchaser.

XII. Choice of Forum

1. If the Purchaser is a businessman, the sole forum for all disputes arising directly or indirectly out of the contract shall be the place of the MICOTROL's head or branch office at MICOTROL's option.
2. All relations arising out of the contract shall be governed by German law not including the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIII. Validity of the Contract

Even in case of legal invalidity of individual items, the remaining parts of the contract shall remain binding save where adherence to the contract would mean an undue hardship on one of the parties.

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