

General terms and conditions

of the HNP Mikrosysteme GmbH (as of: 09/2019)

§ 1 Scope and application

These terms and conditions are only applicable for business transactions with companies.

All goods and services and offers, and as circumstances require, also separate individual agreements are subject to these terms and conditions. Deviating conditions of purchase of the customer shall not become part of the contract even upon acceptance of the order.

§ 2 Offers

Offers are non-binding and without obligation. A legally binding agreement – also in regard to other agreements and subsidiary agreements – is realized only by our written order confirmation. Illustrations, dimensions and weights are only firm, if expressly confirmed by us.

We reserve the right to make technical modifications to the deliverable goods after an order has been placed. There is no obligation to also implement these modifications to goods which are already in the process of production or to already delivered items.

We reserve all rights of ownership, copyright and other industrial rights to all drawings, illustrations, designs, calculations and similar information, both tangible and intangible – and also in electronic form - and the customer shall not copy, use otherwise or disclose them to third parties without our consent. We are committed to not make information or documents, identified by the customer as confidential, available to third parties without the customer's consent.

§ 3 Prices, payments

Unless otherwise agreed, our prices are ex-factory, loading included, but excluding packaging, freight and sales tax. For orders under EUR 100 or USD 100 value of goods (excluding shipping costs) a minimum quantity surcharge of EUR 50 or USD 75 will be charged.

Failing particular agreements, payments without deductions shall be made within 14 days after billing.

The customer shall only have the right to withhold payments or to set off against counterclaims to the extent this his claims are undisputed or have been legally established.

In the event that payment is delayed or deferred by the customer, we are entitled, reserving further claims, to revoke the terms of payment granted, and to demand payment in advance for other goods or services or a security deposit.

Furthermore, we are entitled to terminate the contract and demand compensation rather than payment, following the unsuccessful expiry of an appropriate grace period.

§ 4 Delivery time, delivery delay

Both parties of the agreement shall agree on a date of delivery. Observance by us requires that any relevant technical and commercial issues in regard to the execution of an order have been resolved between the parties, and the customer has made all advance payments and fulfilled other obligations to be provided by him.

Compliance with the delivery date shall also be subject to a timely self-supply.
Anticipated delays are immediately communicated to the customer.

The date of delivery shall be the date of shipment or shipping ex-factory.

In the event that delivery is delayed due to reasons beyond our control such as strikes, lockouts, operational breakdowns, delays in the delivery of essential raw materials and auxiliary supplies - even though our suppliers may be impacted -, the time of delivery will be extended adequately.

In the event that delivery is delayed for reasons that lie within the responsibility of the customer, we shall be entitled to charge the costs incurred by the delay at the end of one month after the agreed date of delivery, or one month upon notice of readiness of shipment.

Part deliveries are acceptable.

§ 5 Delivery, Passing of risks

The INCOTERMS® 2010 shall apply. If no term has been specifically agreed, the trade term shall be Free Carrier (FCA). The risk is transferred to the customer at the time when the delivery items are shipped. In the event that shipment is delayed upon request by the customer, the risk is transferred to the customer on the day of the notification that the shipment is ready.

§ 6 Retention of title

We retain title to the delivered goods (goods subject to retention) until full payment of all business related and customer relevant, existing and future, claims - irrespective of the legal basis - are cleared.

Any possible processing or conversion of goods subject to retention shall be performed by the customer on our behalf. If the goods subject to retention are merged or mixed by the customer with goods which are not ours, we shall acquire co-ownership of the newly created items in the proportion of the total value of the new item to the invoice value of the goods subject to retention. As such the new item is deemed as goods subject to retention for the purpose of these provisions.

The customer may only use or sell these goods subject to retention in the ordinary course of business. The customer may neither pawn the delivery items nor pledge them as security. In the event of seizure, confiscation or other dispositions by third parties must notify us immediately. The customer shall transfer claims associated with a resale to us in advance as collateral. If the customer sells goods subject to retention along with other goods which we do not own, whether or not they are processed or transformed, the claims shall be assigned to us at the amount of the invoice value of those goods subject to retention. The above-mentioned assignments shall not represent any respite of our payment claims against the customer.

When the customer's conduct constitutes a breach of contract on the part of the customer, particularly in the case of delayed payment, we are entitled to demand surrender of the goods subject to retention, and the customer is obliged to return those goods subject to retention to us.

In so far as the realizable value of the securities, which we are entitled to according to the before mentioned provisions, exceeds the value of our receivables by more than 10 %, we shall be committed to release, upon the request of the customer, securities of our choice that are exceeding the securable claim.

Filing an application to open insolvency proceedings on the customer's assets entitles us to withdraw from the contract, and to demand the immediate return of the delivery item.

§ 7 Defects

We shall only be liable for defects to the delivery under exclusion of further claims – subject to § 8 – as follows:

We assume no guarantees for the quality or durability of the delivery item, unless this has been expressly agreed upon.

We shall remedy deficiencies of items at our own discretion, if the cause of the defects has already been present at the time of the passing of risks by either rework or subsequent delivery of a fault-free item within an adequate period of time. This does not affect the fact that in case of permanent failure of the supplementary performance the customer may reduce the price or withdraw from the contract.

The expenses required for the purpose of subsequent performance shall be borne by us insofar as these do not constitute a disproportionate burden. § 445a German Civil Code (BGB) is not restricted.

Marginal deviation from the agreed quality or insignificant restriction of usability shall not entitle the customer to any claims. The finding of such defects must be reported immediately in writing. The message can be replaced by sending the item to us. Replaced parts will become our property.

In the following cases in particular we shall not assume any liability: inappropriate or improper use, normal wear and tear, incorrect or neglectful treatment, electrochemical or electrical influences - unless we are not accountable for that.

The limitation period in relation to defect claims is 12 months, starting with the delivery of the goods, or 18 months upon notification of readiness of delivery. This also applies to claims in accordance with § 445b (1) German Civil Code (BGB), unless the last contract in the supply chain is a consumer goods purchase.

The above mentioned limitations of liability shall not apply in cases of damages to life, body or health, intentional or grossly negligent breach of duty caused by us, and fraudulent concealment of a deficiency or on account of accepting a guarantee of quality. Here the statutory periods will apply.

Actions of supplementary performances will not extend the original limitation period.

§ 8 Liability

For damages that are not caused on the item itself, we assume liability - on whatever legal basis – only in case of

- intent, gross negligence,
- culpable damage to life, body, health,
- defects that were fraudulently concealed,
- acceptance of an express guarantee of quality,
- defects in the delivered goods, to the extent expressed for personal injury or damage to property for private use under the Product Liability Act.

In case of culpable violations of essential contractual obligations, we are liable for any form of negligence, although limited to the contract-typical, reasonably predictable damage. Any further claims are excluded.

§ 9 Software

If software is included in the scope of delivery, the customer is granted a non-exclusive right of use to use the supplied software including its documentation. It is left for use on the intended delivery item. Use of the software on more than one system is prohibited.

All other rights to the software and the documentation including the copies remain with us or the software supplier. Sublicenses are not allowed.

§ 10 Place of performance, applicable law, disputes

Place of performance is Schwerin. The law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.

All disputes regarding the contract shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the ICC rules.