

# GENERAL TERMS AND CONDITIONS

of Micronit GmbH, with its registered office and principal place of business in Dortmund, Germany, hereinafter referred to as: Seller. Trade register: Chamber of Commerce registration number: HRB 28096, Amtsgericht Dortmund, Germany.

## Article 1 Definitions

In these general terms and conditions, the following terms shall have the following meaning, where the singular is used, this is understood to include the plural, and vice versa, unless explicitly stated otherwise.

**Seller:** Micronit GmbH and/or affiliated companies of Micronit GmbH;

**Buyer:** any person, firm or company who purchases Goods from Seller or with whom Seller concludes a Contract;

**Contract:** any agreement concluded between Seller and Buyer;

**Products:** all material objects including (but not limited to) products, parts, components, produced or resold by Seller for Buyer, pursuant to and described in a Contract;

**Catalogue and Webshop Products:** all material objects including (but not limited to) products, parts and/or components, purchased from Seller's catalogue or webshop by Buyer;

**Goods:** collectively Products and Catalogue and Webshop Products;

**Prototyping Services:** the performance of services in respect of the design and creation of one or more prototypes by Seller, pursuant to and/or described in a Contract;

**Design Services:** the performance of technology development and/or product design consulting services by Seller, pursuant to and/or described in a Contract.

**Services:** collectively Prototyping Services and Design Services;

**Order:** any instruction or order given or placed by Buyer to Seller regarding Goods or Services.

## Article 2 General

1. These general terms and conditions apply to and form an integral part of all Contracts.
2. Once these general terms and conditions have found applicability to a Contract, they will also apply to Contracts which will be concluded in the future.
3. Any deviations under these general terms and conditions and every change or addition to any provision of a Contract shall only be valid if these are explicitly agreed upon in writing.
4. A Contract or a change of or addition to a Contract shall be effected only if a duly authorised representative of Seller accepts this in writing by means of an order confirmation. The order confirmation then constitutes the entire agreement between parties and supersedes all prior negotiations, representations or agreements to the Order, unless the order confirmation states otherwise. Furthermore a Contract shall be effected if Seller commences execution of an Order.
5. The fact that any provision of these general terms and conditions is declared void or otherwise loses its validity, does not affect the validity of other provisions of these general terms and conditions.

## Article 3 Execution of the Contract

1. Buyer shall see to it that Seller is provided with all data, documentation and information, of which Seller indicates that these are necessary or of which Buyer should reasonably understand that these are necessary, for the execution of the Contract. If Seller has not been provided in time with these data, documentation and information, Seller is entitled to suspend the

execution of the Contract and to charge Buyer with the extra costs arising from the delay.

2. If activities are carried out by Seller or by third parties instructed by Seller as part of the Order on the location of Buyer or on a location designated by Buyer, Buyer shall provide free of charge the facilities reasonably required by employees of Seller or the third party (parties) mentioned.

3. Buyer indemnifies Seller against any third party claims for damages in connection with the execution of the Contract which are attributable to Buyer.

## Article 4 Modifications to the Contract

Requests by Buyer for any modifications or changes to the Order and/or the Contract, including but not limited to changes in specifications, quantities, delivery obligations and terms of payment, shall be made in writing. All such requests are subject to Seller's prior written acceptance. Seller maintains the right – in case of acceptance of a request - to adjust price and/or delivery schedules accordingly.

## Article 5 Duration of the Contract; term of execution

The Contract between Seller and Buyer is entered into for an indefinite period of time, unless the nature of the Contract dictates otherwise or parties have explicitly agreed otherwise in writing.

## Article 6 Payment

1. Payment is to be made within 14 days of date of invoice, in a manner to be designated by Seller. Unless otherwise agreed upon, all payments shall be made in Euro's. Buyer is under no circumstances, for instance in case of a complaint by Buyer on activities performed by Seller, entitled to suspend payment of the invoice or other obligations of Buyer. Buyer is not entitled to set off any claim of Buyer on Seller, against a claim of Seller on Buyer.
2. If Buyer fails to pay within the 14-day term, Buyer is in default by operation of law. Seller shall then be entitled to charge an interest rate of 0,5% a month, unless the statutory interest rate (article 6:119a Dutch Civil Code) is higher, in which case the statutory interest rate applies. Furthermore all collection costs to be made by Seller will then be compensated by Buyer.
3. If Buyer fails to meet payment requirements, Seller may discontinue the manufacture and/or delivery of Goods and treat such failure as providing reasonable grounds for suspension or termination of the Contract. In such event, cancellation charges shall be due to Seller.

## Article 7 Delivery terms

1. Seller warrants that its transfer of ownership of Goods is rightful and free from any security interest or other lien or encumbrance of third parties.
2. Transfer of title of Goods shall pass to Buyer once Seller has been paid for the Order in full.
3. Unless otherwise agreed upon, all shipments routed by Seller are shipped ex works (incoterms 2010), with transportation charges paid by Buyer.
4. All estimates as to dates of delivery of Goods or performance of Services are based upon conditions prevailing at date of order confirmation or quotation (in case of lack of an order confirmation). Seller will use its best efforts to meet these estimated dates. In the event that there are delays, Seller shall not be liable therefore and Buyer shall derive no rights from this and agrees to accept such deliveries/performance when made by Seller.
5. If Seller is unable to timely fulfil her obligations for any of the following causes: inadequacy of labour, fuel, power, materials, instruments, facilities, strikes, lockouts, war, blockages or embargoes, acts or requirements of any government or any other cause beyond reasonable control of Seller, Seller may choose to extend the time for performance of her obligations or to cancel Buyer's Order without liability of Seller to Buyer.
6. Seller will properly complete all shipping documents based on the information supplied by Buyer.
7. Seller's normal tests and inspection of the Goods, and tests specifically included in the Contract, will be carried out. The Goods and any unit thereof shall be deemed ready for shipment upon satisfactory completion of such tests.

Date: 1 February 2020

8. Special and/or additional tests and inspections may be arranged at Buyer's written request, upon written acknowledgement from Seller and adjustment of the price.

#### **Article 8 Inspection of Goods, complaints concerning Goods**

1. Complaints on the performance of a Contract by Seller should be reported to Seller by Buyer in writing within the terms mentioned in this article. The notice of default should contain as detailed a description of the claimed shortcoming as possible, so that Seller can react adequately.

2. In case of delivery of Goods purchased, Buyer should inspect or have these inspected as soon as possible. In doing so, Buyer should check if the Goods delivered meet the requirements of the Contract, namely: if the right Goods have been delivered in the right quantity, if the Goods delivered meet the quality requirements agreed upon, or in the absence of such agreements, whether the Goods meet the requirements that may be set to normal use and/or purposes.

3. Any visible faults or defects related to Goods or Services should be reported by Buyer to Seller in writing within 14 days after delivery of the Goods or performance of the Services. Buyer should report invisible defects to Seller in writing within 14 days after discovery.

4. In any event, Buyer loses the right to rely on complaints on activities performed (Services) or defects (Goods) if he does not give Seller notice thereof in writing at the latest within 15 (fifteen) weeks after the date of the performance of the Service or the date of delivery of the Goods.

5. Goods can only be returned to Seller after Seller's prior written permission.

6. Seller is deemed to have fulfilled all her obligations and is not in any way liable towards Buyer, if Buyer acts contrary to paragraph 1, 2, 3, 4 and/or 5 of this article.

#### **Article 9 Warranty**

1. Seller guarantees that the Products supplied by her shall be free from design, material and manufacturing faults for a period of 12 months after delivery. The warranty does not apply to assembly/disassembly activities carried out by third parties.

2. Seller guarantees that the Catalogue and Webshop Products supplied by her shall be free from design, material and manufacturing faults for a period of 3 months after delivery. The warranty does not apply to assembly/disassembly activities carried out by third parties.

3. This warranty is subject to following conditions:  
- Buyer has acted in accordance with articles 3.1 and 8; and  
- the Products are installed and used in accordance with Seller's recommended procedures; and  
- any defective part or parts of the Products are returned to Seller within the warranty period in accordance with Seller's standard warranty procedures; and  
- after examination of such part or parts by Seller the existence of such a defect is confirmed.

4. Seller's obligations under this warranty are limited to repair or replacement of such defective part or parts, as Seller elects, free of charge, at Seller's place of business or repair center. All replacement parts and repaired parts are again warranted under the same conditions for a new warranty period of 3 months after delivery of the replaced of repaired parts.

5. Seller's sole liability and responsibility and Buyer's sole and exclusive remedy shall be limited to the remedies set forth above.

6. This warranty is in lieu of all warranties, express or implied, including without limitation, warranties of merchantability and fitness for a particular purpose, all other representations, and all other obligations or liabilities, including liability for damages, for instance direct or consequential damages.

7. The guarantee does not apply, if the damage results from improper treatment or from instructions not being followed properly. Improper treatment includes: overburdening the Goods and improper/unskillful assembly/disassembly or storage of the Goods.

8. Seller guarantees that all Services shall be provided in a professional, workmanlike manner, in accordance with

reasonable standards or practices to the best Seller's abilities. Further, Seller guarantees that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in the Contract. Seller guarantees that the performance of Services under the Contract will not conflict with, or be prohibited in any way by, any other agreement to which Seller is bound or by law.

#### **Article 10 Indemnification**

Buyer agrees to defend, indemnify and hold Seller harmless from any claim of infringement for Goods designed or manufactured to Buyer's specifications if such design, manufacture or specification constitutes the basis for such actual or alleged infringement claim.

#### **Article 11 Assignment**

1. Parties have the right to assign any rights or obligations under the Contract to any of its affiliated or subsidiary companies.

2. Any assignment of rights or obligations under the Contract otherwise than set out in paragraph 1 of this article, requires prior written consent from the other party. Consent will not be withheld on unreasonable grounds.

#### **Article 12 Suspension**

Seller is – notwithstanding other legal rights – entitled to suspend the fulfilment of her obligations, if

- Buyer does not or not fully meet the obligations under any Contract;

- circumstances, brought to the attention of Seller after concluding the agreement, give Seller good cause to fear that Buyer will not meet its obligations and Buyer fails to provide sufficient security for the fulfilment of its obligations.

#### **Article 13 Liability**

1. If Seller were to be liable regarding Goods, this liability shall at all times be limited to the price of the (part of the) Order the liability is related to.

2. Seller is not liable for indirect and consequential damages.

3. Any liability of the Seller regarding Services is excluded, unless the damage is caused intentionally by Seller or as a result of Seller's deliberate recklessness.

#### **Article 14 Passing of risk**

The risk of loss or damage of the Goods, which are subject of the Contract, pass to Buyer the moment they are legally and/or actually delivered to Buyer or a third party to be designated Buyer.

#### **Article 15 Retention of title**

1. All Goods delivered by Seller shall remain the property of Seller until Buyer has fulfilled all its obligations under all Contracts concluded with Seller.

2. Goods delivered by Seller, falling under retention of title by virtue of clause 15.1, can only be resold in the context of an ordinary course of business and can never be used as means of payment.

3. Buyer is not entitled to pledge or encumber in any other way the Goods falling under retention of title.

4. Buyer gives Seller or a third party to be designated by Seller, in all cases in which Seller wants to exercise its property rights unconditional and irrevocable permission, to enter the places where Seller's properties are or will be situated and to remove the Goods.

5. If third parties seize the Goods delivered under retention of title or create or lay claims to them, Buyer is obliged to inform Seller thereof as soon as can reasonably be expected.

6. Buyer undertakes to insure and keep insured the Goods delivered under retention of title against damage, for instance as a result of fire, explosion, water and theft.

#### **Article 16 Regulatory compliance**

1. Buyer shall comply with all applicable laws and regulations related to the purchase of the Goods under the Contract including but not limited to, safety and environmental regulations, technical standards and export controls.

2. Buyer shall not use or operate the Goods in a manner other than that intended in Seller's offering without Seller's prior written consent.

3. The Goods shall not be exported or transshipped contrary to applicable laws and regulations. As Buyer is the exporter of record (Goods sold ex-works), it is the responsibility of Buyer to acquire any required export license. Seller will reasonably assist in the supply of information required in the application process.

#### **Article 17 Confidentiality**

Except as required to fulfil the Contract or as otherwise instructed by the other party, neither party shall use or disclose any confidential information of the other party. Confidential information includes, without limitation, all information designated by either party as confidential; all information or data concerning either party's Goods (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes); information obtained through access to other party's information assets systems ("IA/S"), including but not limited to, computers, networks and voice mail; and any other information that is of such a nature that a reasonable person would believe it to be confidential.

#### **Article 18 Intellectual property**

1. Seller and Buyer reserve the intellectual property rights (copyrights included) and powers belonging to them.

2. All documents provided by Seller or Buyer to the other party, such as reports, advice, agreements, designs, sketches, drawings, software, etc., are meant to be used by the other party only for the fulfilment of the obligations under the Contract and cannot be multiplied, publicised, or brought to the knowledge of third parties without prior permission of the party who provided the documents, unless the nature of the documents provided requires otherwise.

3. Except for rights explicitly granted in the Contract, nothing in the Contract shall be construed as conferring a license or option to a licence or transferring any intellectual property.

4. Seller reserves the right to use the knowledge gained in the execution of the activities for other purposes, insofar as no confidential information is brought to the knowledge of third parties.

#### **Article 19 Competent court**

Any dispute or claim arising out of or in relation to the Contract shall be submitted to the competent Dutch court.

#### **Article 20 Applicable law**

1. Dutch law shall apply to each Contract between Seller and Buyer.

2. The United Nations Convention on Contracts on Contracts for the International Sale of Goods (UNCG) is excluded.

#### **Article 21 Modification**

Any changes or modifications to these general terms and conditions must be agreed in writing by both parties.