

General Terms of Purchase and General Terms for Procurement of Works and Services



Microtherm GmbH
Status as of June 2009

This is a translation of the original text in German and is therefore not legally binding at any time. The German original text alone is legally binding.

Section 1 Area of Application

1. In supplementation of the other contractual provisions, these General Terms of Purchase shall apply to all business transactions between MICROTHERM GmbH, hereinafter called MICROTHERM, and the supplier. We do not recognise any other terms unless we have expressly agreed to their application. These General Terms of Purchase shall also apply even if we are aware of differing terms when accepting a delivery or service.

2. These General Terms of Purchase also apply to all future business relations without being incorporated again. They will apply until we issue new General Terms of Purchase.

Section 2 Offers

1. Offers and samples shall be supplied to us free of charge. Offers must clearly indicate any deviations from the invitation to bid. The supplier shall be bound by his offer for at least one month.

2. Our written material must be returned to us free of charge and without delay when no longer needed for performance of the contract.

3. The supplier must confirm the order in writing. For as long as no confirmation has been received, we have the right to cancel the order. Confirmed prices are considered to be fixed prices. Supply calls become binding if not protested by the supplier within one week of receipt. Skeleton orders justify procurement of no more than the necessary quantity of input material. Parts for call orders shall not be produced until a call has been received.

4. We can require contractual amendments before an order has been performed. Amendments shall be made by mutual agreement. We must be notified immediately of any doubts about amendments we have requested.

If no agreement can be reached, we have the right to rescind the contract; in such a case, the supplier will be paid reasonable compensation for expenses.

The supplier is not entitled to amend an order without obtaining our prior written consent.

Section 3 Payment

1. Supply shall be made in compliance with Clause DDP (*Delivered Duty Paid*) of INCOTERMS 2000. The price entered in the order is considered to be the maximum price, which can be reduced but not increased.

The supplier will not charge us higher prices or grant us poorer terms than other comparable customers. Value-added tax must be entered separately. Costs of packaging are included in the price.

2. Invoices must be issued separately in duplicate for each order, with identification of the original and the copy.

Our order number and, if known, the person or department placing the order and the scheduled application should be entered.

3. If nothing is agreed to the contrary, we will make payment in Euros free to the German bank account of the supplier.

Payment will be made within 30 days, provided that the invoice is due, goods have been received in full and without defects or the service rendered without defects. This shall apply accordingly to permitted partial deliveries.

Delays due to defective invoices will not affect agreed discount periods. If a discount has been agreed, payment will be made accordingly but with no less than a 3% discount if payment is made within 14 days.

The agreed period will begin on the date of non-defective delivery, the date of non-defective rendering of services, the date of acceptance or the date on which the invoice becomes due, whichever date is the latest.

Payment will be made subject to inspection of the invoice and due contractual performance.

4. We will not be in default in the event of ordinary negligence. Our duty to pay compensation for damages caused by delay shall be restricted to damages typically occurring.

5. If advance payments have been agreed, the supplier shall furnish an unlimited performance guarantee from a German bank or insurance company, this being concurrent with performance and to the amount of the advance payment. In the event of delayed delivery, default interest at a rate of 8 percentage points above the basic interest rate under Section 247 of the German Civil Code (BGB) will be deducted from the advance payment. The supplier has the right to provide evidence of a lower loss.

Our claim to default damages is not otherwise affected by this ruling.

6. We have the right to rescind the contract if the supplier's solvency deteriorates to an extent endangering performance of the contract or if the supplier discontinues supply or if insolvency proceedings are instigated in relation to his assets. This right of rescission can also be exercised in part only.

7. Without our consent, the supplier has no right to assign claims against us to third parties or to have them collected by third parties. This consent is deemed given if an extended reservation of title has been agreed. If the supplier assigns claims against us to third parties without our consent, we can make payment to either the supplier or the third party with discharging effect.

8. We hold the right to refuse performance, to offset payment and to withhold payment to the extent permitted by law. The supplier only holds offsetting and withholding rights if the counter-claim on which the performance refusal, offsetting or withholding right is based is undisputed or has been finally established by a court of law.

Section 4 Inspection Obligation and Obligation to Submit Notice of Defects

We must inspect deliveries for obvious defects. Notice of defects is deemed to have been given in due time if submitted within 10 working days of discovering the defect. To this extent, the supplier waives the defence of delayed notice of defects. The notice of defects given by the customer is the decisive criterion in the event of transit transactions.

In the event of a justified complaint, we reserve the right to charge the costs of inspection and of the notice of defects to the supplier. The supplier shall pay the costs and bear the risk for return of defective goods.

Section 5 Confidentiality

1. The supplier undertakes to treat all aspects of the business relationship as confidential. In particular, he will treat as business secrets all the non-apparent commercial and technical details of which he learns through the business relationship.

The duty to maintain confidentiality does not apply to information or aspects of the business relationship which were already public knowledge when disclosed or to information or aspects of the business relationship which can be proved to have already been known to the supplier before being disclosed by us.

Our written material and information shall only be made available to the persons performing our order. The supplier will ensure that his employees also protect our justified interest in maintaining confidentiality.

2. The supplier must continue to maintain confidentiality after the end of the business relationship.
All items which we furnish must be returned to us after refusal or completion of the order.
3. Reproduction of the items furnished to the supplier is only permitted as required for business purposes and in compliance with copyright law.
4. No information relating to our business relationship is intended for third parties.
Disclosure of our order to third parties, even if only partial, is subject to our prior written consent; in such cases, the supplier must make a similar agreement with the third parties, placing them under an obligation to maintain confidentiality.
The supplier may only use our business relationship for advertising purposes subject to our prior written consent.
5. Items which we furnish to the supplier remain our property.
Items produced on our behalf become our property. They may only be supplied to third parties subject to our express prior written consent.
6. No transfer of an order to third parties is permitted without our approval. Such an action entitles us to rescind the contract and claim damages.
7. The supplier undertakes not to handle business transactions relating to the subject of the order either directly or indirectly with our customers.
Products complying with our order and intended not for general use but for a specific application must not be supplied to third parties.
8. The supplier undertakes to take appropriate measures to protect confidential documents and information from unauthorised access.
9. If we suffer a loss as a result of a breach of the obligation to maintain confidentiality, compensation shall be rendered for the same by the supplier.

Section 6 Supply

1. Dates and set periods in orders and calls are binding. We have no obligation to accept delivery before the delivery date.
For observance of delivery periods and dates, the decisive criterion for deliveries is the time of receipt of the delivery at the agreed MICROTHERM works or the recipient office or place of application named by us.
For services, on-time and full completion of performance is the decisive criterion.
For works, the time of acceptance is the decisive criterion.
Partial deliveries are only permitted subject to written approval.
The supplier must notify us immediately of any difficulties preventing on-time delivery of the prescribed quantity or quality and await a decision on whether the order is to be upheld. He shall be liable for any failure to give such notification or for delayed notification.
2. If deliveries are made earlier than agreed, we reserve the right of return at the cost of the supplier or of intermediate storage with third parties at the expense of the supplier. If such deliveries are not returned or stored with third parties, the goods will be stored on our premises until the delivery date at the cost and risk of the supplier. In the event of early delivery, we reserve the right to withhold payment until the agreed due date. If deliveries are made at an earlier date, the discount period will be calculated as of the agreed delivery date or the date on which we receive the invoice, whichever event is later.
3. If supply is delayed, we hold the statutory claims. The supplier cannot disclaim or limit liability. In the event of rescission, we have the right to keep partial deliveries against payment. If the supplier repeatedly or permanently fails to observe delivery dates, we have the right of rescission or termination of the contract without notice. If the supplier fails to observe delivery dates through no fault of his own, we have a right of rescission if the delay is substantial and rescission is necessary because we have commitments that make immediate supply essential.
4. If the supplier is in default, he must comply with any request we may make for urgent shipment (as express goods, by express courier, as an express parcel, by air freight, etc.) at his own expense.
5. No reminder or allowance of a period of grace is necessary if a fixed delivery date has been agreed or if the supplier states that he will not be able to supply within such a period either.

6. If the supplier is in default, we must send a reminder and are then entitled to require payment of a contractual penalty of 10% of the net value of the goods or services per full week, but not more than a total of 50% of the net value of the goods or services, and to rescind the contract. We reserve the right to claim higher damages. The supplier has the right to provide evidence of lower damages. The contractual penalty will be credited to a damages claim. The right to require payment of an agreed contractual penalty is not forfeited by any failure to expressly reserve the right to said penalty when the delayed delivery is accepted, provided that said penalty is claimed before final payment.
7. If the supplier is in default with delivery, we have the right to make covering purchase, insofar as this is advisable to prevent imminent consequential damage resulting from the delay. The additional costs which we thus incur are payable by the supplier. If the supplier fails to observe delivery dates through no fault of his own, we have a right of extraordinary termination if the delay is substantial and rescission is necessary because we have commitments that make immediate supply essential.
8. The supplier can only invoke our failure to supply necessary written material for which we were responsible if he sent a written reminder about said material and did not receive it within a reasonable period.
9. In the event of delayed acceptance, we are only liable for damage claims if we are at fault.
10. Each shipment must be accompanied by a delivery certificate in duplicate, containing all the data given in the order, in particular the order number, parts number, batch number and item number.
Partial and residual deliveries must be identified as such.
The delivery certificate must be attached to the outside of the shipment, either underneath a sticker or under wrapping paper marked "delivery certificate here".
For supplies that are imported, the shipment must be accompanied by all necessary shipping documents – depending on type of dispatch and country of supply –, in particular movement certificates, express parcel consignment notes, customs shipping notes, certificates of origin and invoices.
11. We must be notified in advance of every delivery. This prior notification must contain information on our order number, quantities, size, weight, special regulations on goods handling, unloading, transportation and storage.
Any delays, additional costs and damage resulting from non-compliance with shipping regulations will be the responsibility of the supplier. We reserve the right to return packaging to the supplier.
12. The risk passes to us after delivery to the shipment address stated by us and unloading by the supplier or the carrier, or after acceptance. This also applies if our staff help with unloading.
13. Goods can be delivered during business hours or during goods delivery hours of which we have given notice.

Section 7 Force Majeure

In cases of force majeure, we are released from our obligation to accept the goods or works and from our obligation to take receipt of services. This also applies to other contributory actions in performance of the contract. If acceptance cannot be effected by us in due time due to force majeure or other unforeseen hindrances outside our sphere of influence and prejudicing acceptance of the goods, the period of acceptance shall be extended accordingly and there will be no default on acceptance.
Insofar as the force majeure lasts for a not insignificant period, i.e. at least 2 weeks without interruption, we have the right to rescind the contract if such force majeure causes a significant reduction in our requirements. This applies in particular if our requirements are reduced by more than 30 %.

Section 8 Product Safety

1. The supplier warrants that his products, services and works are free from defects.
2. The supplier must request information about the scheduled application of his products, services and works.
3. The supplier should mark the items he supplies so that they are identifiable as his products.
4. The supplier must enclose works test certificates and safety data sheets with his deliveries.

5. In respect of all products, services, works and deliveries, the supplier must comply with recognised engineering rules and the agreed (technical) data, in particular quality regulations and relevant protective laws and other safety regulations. In particular, he warrants that his products do not contain any of the hazardous substances of which use is restricted in the EU Directive **2002/95/EC** and all similar following directives and the national laws and ordinances based on the same, such as mercury, cadmium, lead, chrome VI, PBB and PBDE.

6. The supplier gives a warranty that the supplied item and its design comply with the regulations applying to the operation or use of such items, irrespective of whether these regulations are based on European or other law, public authority regulations or commercial practice. In doing so, he holds us harmless in relation to all public-law and private-law claims resulting from breaches of such regulations.

Section 9 Quality

1. The supplier must set up a quality management system based on the international standard ISO 9000 ff., with an obligation to set a zero-error target and improve performance on an ongoing basis.

2. The supplier must ensure that his suppliers operate a comparable quality management system, so that his bought-in parts, services, works and deliveries, together with any parts that are finished or otherwise treated externally, are ensured to be without defects.

Further details will be specified in the individual quality agreements made between the parties.

Section 10 Warranty

1. Complaints mean additional work. Thus we reserve the right to charge a flat rate of € 100.00 for damages per complaint.

The supplier has the right to provide evidence of lower expenses and we have the right to provide evidence of higher expenses.

2. We are entitled, at our discretion, either to require subsequent performance by the supplier or to rescind the contract or reduce the purchase price and require compensation or reimbursement of futile expenses in compliance with legal regulations. For subsequent performance, we are entitled to require, at our discretion, either the remedying of defects or supply of a non-defective item. The supplier must pay all the necessary expenses for the remedying of defects, substitute supply or repair of damage, in particular the costs of transportation, travel, labour and material.

3. If the supplier fails to remedy the defects or perform substitute supply within a reasonable period that we have specified or if it is impossible to remedy defects or such remedying of defects is not successful, we have the right to rescind the contract and require compensation instead of performance.

In urgent cases, in particular if there is imminent danger or a need to prevent damage, we have the right to remedy defects ourselves or have them remedied by third parties at the expense of the supplier.

4. We can remedy minor defects, or defects for which there is a risk of damage, at the supplier's expense without the warranty obligations of the supplier being forfeited.

5. If the same goods are repeatedly supplied with defects, we have the right, after issuing a written caution, to rescind the contract if we receive yet another shipment with defects. This will then also apply to the deliveries not yet made.

6. If they relate to a purchase contract, our warranty claims, in particular claims to the remedying of defects or compensation for damages, are subject to a time restriction of 36 months after delivery of the MICROTHERM products manufactured using the supplied goods but no later than 60 months after supply to us or, if they relate to services and works, a time restriction of 60 months after acceptance of the service or works.

This only applies if a longer limitation period or a limitation period beginning at a later date is not prescribed by law.

If acceptance is delayed through no fault of the supplier, the warranty period shall be a maximum of 60 months after provision of the supplied item for acceptance.

The warranty period for buildings and defects in parts for buildings is 60 months after acceptance or taking into operation.

If supplied items cannot remain in operation or other use for their intended purpose during subsequent performance or remedying of damage, the ongoing warranty period for these items will be

extended by the time of interruption of operation or use.

The above limitation periods also apply in the event that the supplier has given a warranty for his products, works or services.

7. Claims against the supplier for reason of legal defects in products, services or works are subject to a time limitation of 10 years.

This shall only apply if a longer limitation period or a limitation period beginning at a later date is not prescribed by law.

The supplier will hold us harmless in relation to claims made by third parties for reason of legal defects.

8. The limitation period for parts that have been reworked or replaced during the said limitation period shall begin anew when the supplier has completed the services for subsequent performance or upon acceptance.

9. If a material defect is found within 6 months of passage of risk, it will be assumed to have already existed upon passage of risk, unless such an assumption is incompatible with the type of defect.

10. The supplier will hold us harmless in relation to damages claims made by third parties as a consequence of material defects in the supplied item or the service or work.

11. The supplier will hold us and our customers harmless in relation to claims made by third parties in the event of legal defects.

12. The supplier must reimburse expenses and damages resulting from a recall or withdrawal programme implemented to avoid injury to persons or property losses and constituting a consequence of a defect in the supplied item or service or work.

13. The supplier warrants that no property rights of third parties are breached in connection with his performance. If claims are made against us by a third party in this connection, the supplier must hold us harmless in relation to these claims upon first request. If property rights of third parties are used in compliance with licensing contracts made by the supplier, the latter must ensure that use of the supplied products is permitted in all countries in which such property rights apply. We hold a free right of co-utilisation of his property rights as far as applicable to the supplied products. The supplier's obligation to hold us harmless relates to all expenses which we incur as a result of or in connection with a claim made by a third party.

Section 11 Insurance

The supplier undertakes to maintain a business and product liability insurance policy with coverage of at least 2 million euros in each case for bodily injury, on the one hand, and for material damage and product financial losses, on the other, together with a recall costs insurance policy for automotive parts and non-automotive parts, each with coverage of at least 1 million euros.

The scope of the product liability insurance policy must embrace the coverage types of so-called extended product liability insurance (ProdHV), including insurance of bodily injury and material damage due to a lack of agreed qualities of supplied products as per Section 4.1 ProdHV (GDV sample terms – status as of April 2006), combination, mixing and processing of supplied products as per Section 4.2 ProdHV, further processing and treatment as per Section 4.3 ProdHV, removal and installation costs as per Section 4.4 ProdHV, scrap production by machines as per Section 4.5 ProdHV and a test and sorting costs clause as per Section 4.6 ProdHV.

Coverage must also include losses incurred abroad.

The supplier undertakes to take out adequate transportation insurance for his shipments.

The supplier will agree with his insurer that the procedure for notice of defects as per Section 4 of these terms does not prejudice coverage.

The supplier will agree with his insurer that the warranty ruling as per Section 10 No. 6 of these terms does not prejudice coverage.

The supplier will agree with his insurer that the indemnity statement under Section 10 No. 10 of these terms will be co-insured under his business and product liability insurance policy.

The supplier will agree with his insurer that the recall costs under Section 10 No. 12 of these terms will be co-insured in addition to his business and product liability insurance policy.

By no later than delivery of his first supplies or completion of his first services, the supplier will furnish us with a certificate of insurance showing the above scope of coverage.

delayed or defective supply or if we are permitted to refrain from

Section 12 Production Aids and Provision of Materials

1. Production aids which we provide, plan or pay for, such as models, moulds, templates, samples and tools, remain or become our property.

They must not be used for supplies to third parties or reproduced, sold, assigned as security, pledged or passed on in any other way. The same applies to the supplied items manufactured with the help of these production aids.

The supplier has an obligation to use the production aids exclusively for the manufacture of the contractual products we have ordered.

2. If items belonging to us are attached by third parties, the supplier must notify us immediately in writing. The supplier must inform the enforcing party of the ownership of the items when they are attached.

3. The supplier must take out property insurance for items belonging to us at reinstatement value at his own expense, with insurance coverage that is as extensive as possible (all-risk coverage, extended coverage).

The supplier assigns the compensation claims under this insurance to us. We hereby accept this assignment.

4. The supplier must perform at his own expense and in due time any necessary maintenance and servicing work on the items provided, together with all upkeep and repair work.

5. We reserve the title to any materials that we provide. Contractually agreed processing or alteration by the supplier is performed for us. If the goods subject to reservation of title are processed, combined or mixed with items not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of the goods subject to reservation of title to the other items at the time of processing, combination or mixing. If processing, combination or mixing is done in a way that means that the supplier's item is to be regarded as the primary item, it is deemed agreed that the latter will assign us proportional co-ownership.

This ruling shall also apply even if we refuse acceptance due to

further orders.

In such cases, the items provided must be placed at our disposal free of charge. No offsetting is permitted.

6. Additional costs due to material faults and dimensional differences in the raw materials provided can only be charged to us if our prior written consent to these additional costs has been obtained.

7. When materials are provided, the supplier must inspect them for obvious defects, such as identity, quantity and transportation damage, and notify us of any such defects immediately. Any defects in the items provided that are found during processing must be reported to us immediately after being discovered.

8. If the security rights which we hold exceed by more than 20% the purchase price of all goods subject to reservation of title and not yet paid for, we will release an appropriate proportion of the security rights at the supplier's request.

9. We will not recognise any expansion or extension of reservation of ownership going beyond the supplier's simple reservation of ownership of the supplier's unprocessed product stored with us, in particular after processing, combination or mixing with other goods and after sale of the supplier's product.

Section 13 Governing Law

1. At our discretion, the legal venue is either the court having jurisdiction for our seat of business or the supplier's legal venue.

2. The place of performance is the place at which the goods are to be delivered under the contract.

3. Solely the law of the Federal Republic of Germany governs the contractual relations between our customers and us.

Application of the CISG – "Vienna Sales Law" – is ruled out.

4. If any parts of these General Terms of Purchase are ineffective, the effectiveness of the other provisions will not be affected thereby. The contracting partners will make every effort to replace the ineffective clause by a clause approaching as closely as possible the business purpose and legal intent of the original wording.