

## **General Terms and Conditions of Business and Deliveries**

**For the Company Micro Surfaces GmbH**

**Kleines Wegle 5**

**71691 Freiberg am Neckar**

### **§ 1**

#### **Validity**

1. The following conditions are only valid for all offers submitted by us and for all contracts agreed with us regarding the delivery of goods and work services.
2. Conditions of purpose or contrary conditions of the customer are only valid if we confirm these in writing.

### **§ 2**

#### **Conclusion of Contract**

1. All our offers, particularly those in catalogues, sales documentation and the Internet are non-binding. From a legal point of view these are to be considered as invitations to bid.
2. Orders are accepted if we confirm them in writing or if we execute them immediately following receipt of the order.
3. In cases of doubt the contract contents conform to our order confirmation; or where this is not given to our delivery note.
4. Information on dimensions, weight and performance, illustrations and drawings are considered to be approximate if we do not identify them as binding.
5. We reserve our copyrights and proprietary exploitation rights without restrictions for estimates of costs, construction drawings and other documents; they may not be provided to third parties without our permission and must be returned immediately in the event that a contract is not concluded.

6. We retain the right to make modifications to construction or form during the delivery period as long as these are not significant changes to the scope of services and they are reasonable to the customer.
7. Additional agreements – including those with our representatives, field staff or other agents – require our express, written confirmation in order to be effective.

### **§ 3**

#### **Delivery**

1. Delivery deadlines only begin after the complete clarification of all execution details. Adherence to delivery deadlines assumes the fulfilment of the contractual obligations of the customer: particularly the payment of an agreed deposit and the punctual provision of necessary documents.
2. In the event of delivery delays because of force majeure or because of events for which we carry no blame and that make the delivery substantially more difficult or impossible at times – these include in particular strike, lockout, official orders, transport disruptions etc. - even if they occur at our suppliers or sub-suppliers, then the agreed deadline will extend by a suitable period. If the hindrance to performance lasts for more than 3 months then both contractual parties are entitled to withdraw wholly or partly from the contract. No compensation claims are permitted. The same applies if we are not supplied at all or in time by our suppliers without us carrying any blame for the same.
3. Partial deliveries are acceptable to a limited extent.
4. We will try our best to uphold agreed delivery deadlines. In the event that we culpably fail to meet agreed deadlines the customer is obliged to grant an adequate extension period. After the end of this extension period the customer is entitled to withdraw from the contract. § 7 is valid accordingly for the assertion of damages caused by delayed performance and damage caused by non-fulfilment.
5. If the shipping is delayed for reasons for which the customer is to blame then storage fees of 0.5 % of the invoice amount can be demanded for each month or part thereof but only to a maximum of 5% of the invoice amount. This does not rule out the assertion of greater damages. The customer is still entitled to prove that no damage or substantially less damage was incurred.

6. If the customer culpably refuses to fulfil the contract then we are entitled to demand compensation at 20% of the invoice amount excluding VAT. This does not rule out the assertion of greater damages. The customer is still entitled to prove that no damage or substantially less damage was incurred.

#### **§ 4**

#### **Prices, Terms of Payment**

1. The prices are valid net ex works including loading, plus VAT at the appropriate statutory rate.
2. The customer must pay all duties, taxes or similar costs incurred by our deliveries and performances in the customer's country.
3. If more than 4 months pass between contract conclusion and the beginning of contract execution then we reserve the right to increase our prices appropriately if cost increases occur after contract conclusion, particularly in the event of increased materials, raw materials, personnel, manufacturing and transport costs. We will prove these increases to the customer upon request.
4. The customer may only offset against claims that are undisputed by us or are legally established. If the offset takes place in the course of legal proceedings then it is sufficient if the customer's claims are ready for decision at the time of the offset.
5. The enforcement of a right of retention for disputed or counterclaims that has not been legally established is ruled out where these claims do not rest on the same contractual relationship.
6. Payments may only be made to us. Claims against us may not be assigned.

## § 5

### **Transport, Transfer of Risk, Acceptance**

1. Risk is transferred to the customer when the goods are delivered, if freight-paid delivery is agreed then as soon as the goods leave our factory or the customer is in default of acceptance. This is also valid for partial deliveries. If the shipment is delayed for reasons for which the customer is responsible then the risk is transferred to the customer at the time of announcement of readiness for shipment. The same is valid accordingly if the goods are delivered from the factory of a third party commissioned by us.
2. Any transport damage must be reported to the transport company before payment of the freight and before acceptance of the goods. Damaged goods or reduced quantities that were not recognisable at acceptance must be reported to the carrier by the recipient within 1 week of delivery.
3. If acceptance is delayed with respect to work performance for reasons for which the customer is responsible then the acceptance is considered to have taken place if a reasonable deadline set by the customer for the acceptance has expired without results and we have informed the customer at the same time of the significance of expiry of the term, at the latest 3 months after delivery.

## § 6

### **Notification of Defects, Liability for Defects**

1. Quality descriptions, e.g. regarding dimensions, weight and other technical information, are considered merely as descriptions of properties and do not signify acceptance of a guarantee. The customer is responsible for testing whether the goods are suitable for his or her purposes.
2. The goods that we deliver must be inspected carefully by the customer for quantity, defects and quality immediately following receipt. They are considered approved if recognisable objections are not reported to us in writing within 1 week of receipt of the goods or, if the defect is discovered later, 1 week after discovery. This is not valid if acceptance was agreed expressly. If the customer discovers a defect in the goods then he or she may not dispose of the goods, i.e. the goods may not be divided, sold or processed.

3. In the event of defects in the delivered goods or the work performance we are entitled to supplementary performance of our choice, either through resolution of the defect or the delivery of defect-free goods. We are free to demand, as we choose, that the defective goods are shipped to us for re-working or exchange with subsequent return at our cost or that the customer keeps the goods ready and the conversion or exchange is carried out there by us or by a person commissioned by us. The customer is entitled to this if it is not reasonable to ask him or her to send the goods to us. We will pay for the efforts required for the supplementary performance (particularly transport, road, work and materials costs). This is not valid for increased costs that are incurred because the goods were transported to a location other than the residence or the commercial premises of the customer following delivery except if the transportation was in accordance with the correct use of the goods.
4. In the event of failed supplementary performance, i.e. impossibility, serious and final refusal, unreasonable delay or failed attempt at supplementary performance, the customer is entitled to reduce the purchase price or, at his or her own discretion, to withdraw from the contract. Withdrawal is ruled out if the defective object is a construction service.
5. If a defect is based on our culpability or on culpability for which we are responsible, then the customer can demand compensation or reimbursement of expenses under the prerequisites in § 7.
6. The period of limitation for defect claims is 12 months. In the event of a defect relating to § 438 paragraph 1 no. 2 of the German Civil Code (buildings and items used for a building) or § 634a paragraph 1 no. 2 of the German Civil Code (buildings and monitoring services for buildings) the period of limitation is five years. If the defect claim depends on culpability then the period of limitation is in accordance with § 7 section 4.
7. The delivery of used goods agreed with the customer in individual cases is carried out excluding all claims for defects.

## § 7

### General liability

1. In the event of a breach of obligations we are only liable for compensation or the reimbursement of costs - subject to the further contractual and statutory liability prerequisites – in the event of intent or gross negligence. This is not valid where the breach of obligation relates to an important contractual obligation (a contractual obligation, the breach of which endangers achievement of the purpose of the contract and in the fulfilment of which the contractual parties trust on a regular basis) or guarantee or that leads to an obligation for damage resulting from damage to life, body or health or where we are liable in accordance with the product liability law.
2. In the event of liability on the basis of the negligent violation of an important contractual obligation the liability is limited to the damage that was predictable as typical for the type of contract at the time when the contract was concluded.
3. The above liability exceptions and limitations are valid to the same extent in favour of our organs, legal representatives, employees, agents and other representatives.
4. The period of limitation for all claims against us regarding damage or cost reimbursements, for whatever legal reasons, is 12 months, where we are not liable because of wilful intent or gross negligence or for damage resulting from injury to life, body or health or in accordance with the product liability law.

## § 8

### Retention of Title

1. The following agreed retention of title serves to secure all our existing, current or future claims against the customer resulting from the existing business relationship with the customer (including balance claims resulting from any agreed current account relationship).
2. The delivered goods remain our property as conditional goods until full payment of all secured claims.
3. If the customer falls behind with the payment then we are entitled to demand issue of the conditional goods without a prior withdrawal on our part.

4. The customer will store the conditional goods for us free of charge.
5. The customer is entitled to resell or process the conditional goods in the proper course of business. However the customer assigns to us here and now all claims to the value of the conditional goods with all ancillary rights and entitles us to collect these claims. We herewith accept the assignment.
6. The processing or conversion of the conditional goods is considered undertaken on our behalf. Thus we are considered the manufacturer within the meaning of § 950 of the German Civil Code.
7. The value of the conditional goods is our invoice amount. If the resold conditional goods are co-owned by the customer then the assignment of the claim extends to the sum corresponding to the value of the customer's share in the co-ownership.
8. Where processing is carried out with goods that do not belong to us we shall acquire co-ownership of the new object in the ratio of the value of the conditional goods to the value of the other goods at the time of processing. If the conditional goods are combined, mixed or blended with goods that do not belong to us in accordance with §§ 947, 948 of the German Civil Code then we will acquire co-ownership in accordance with the statutory regulations. If the customer acquires sole ownership through the combination, mixing or blending then the customer will transfer to us, here and now, co-ownership according to the ratio of the value of the conditional goods to the other goods at the time of the combination, mixing or blending.
9. If the conditional goods are installed by the customer as an important component in a site, a ship under construction or an aircraft belonging to the customer then the customer shall assign to us, here and now, the claims resulting from the resale of the site, from land law, from the ship, the ship under construction or the aircraft to the value of the conditional goods.
10. The customer is not entitled to pledge the conditional goods or to transfer ownership by way of security.
11. The customer retains his or her entitlement to collect the assigned claims until further notice. We will not make use of our collection authority as long as the customer fulfils his or her obligations of payment to us. The customer is obliged to name the debtors of the

assigned claim to us on request and to notify the debtors of the assignment, without prejudice to our right to notify the debtors of the assignment ourselves.

12. In the event of default of payment, suspension of payment, application for insolvency proceedings against the assets of the customer or dismissal of such an application all rights cease to sell, process, mix or blend the objects delivered under reservation of title or to combine them with others or utilise them in any way.
13. In the event of attachment or other interventions by third parties the customer must inform us immediately in writing so that we can file a suit in accordance with § 771 of the Code of Civil Procedure. Where the third party is not in a position to reimburse us for the judicial and extra-judicial costs of an action in accordance with § 771 of the Code of Civil Procedure the customer shall be liable for the resulting loss.
14. We undertake to release the securities to which we are entitled at the customer's request in so far as the estimated value exceeds the extent of the secured claims by more than 50%.

## **§ 9**

### **Software Use**

1. In the event that software is included in the scope of delivery the customer is granted the non-exclusive right to use the delivered software and the corresponding documentation. It is provided for use on the intended delivery item. It is prohibited to use the software on more than one system.
2. The customer may only copy, revise or translate the software or convert it from the object code into the source code to the extent permitted by applicable law (§ 69 a Copyright Law). The customer undertakes not to remove manufacturer's information, particularly copyright notes, or to modify the same without our express, prior agreement.
3. We retain all other rights to the software and the documentation, including copies. It is not permitted to grant sub-licences.

## **§ 10**

### **Final Provisions**

1. The exclusive court of jurisdiction for legal disputes with merchants, legal persons or special estates under public law is the court where our headquarters are located. However we are entitled to file a suit at the customer's headquarters or other courts that are responsible on the basis of domestic or foreign law. Mandatory legal provisions regarding exclusive courts of jurisdiction remain unaffected by this provision.
2. The legal relationship to the customer is governed by German law with exclusion of the UN sales law (agreement of the United Nations concerning contracts involving international goods sales - CISG).
3. In the event that one or several conditions are wholly or partly ineffective this will not affect the validity of the remaining conditions. If the ineffective conditions contain an effective, reasonable part then this part shall be maintained.