

General Conditions for the Sale and Supply of Mikron GmbH Machinery



to be used with respect to:

1. a natural or legal person, or partnership, acting, at the time of the conclusion of the contract, as a tradesperson / business in a commercial or professionally independent capacity;
2. corporate bodies under public law or a special asset under public law.

I. Scope of Application

The following General Conditions for the Supply and Delivery of Machinery (hereinafter referred to as "Conditions") shall apply to all deliveries and services of machinery, including any accessories unless otherwise specifically agreed in writing. Deviations from or amendments to the Conditions made by the Purchaser shall apply only if specifically approved by Mikron in writing.

The Conditions shall also apply when Mikron unreservedly provides goods or services although we know about the opposing or deviating conditions of the Buyer. The Purchaser acknowledges the validity of the Conditions, even in the case of opposing previous orders or correspondence and/or references to own terms of business. The Conditions shall also extend to any future business with the Purchaser. Failing any specific agreement, spare parts and assembly work shall be provided on the basis of the "Mikron Conditions for Delivery of Spare Parts" and the "Mikron General Conditions for Erection" respectively, at the then applicable rates.

II. Offer, Conclusion of Contract

1. Our offers, including any relevant documents, shall be binding only to the extent that they are specifically identified as binding with respect to the contract. Otherwise, our offers are not binding. Reasonable technical deviations as well as reasonable deviations with respect to form, color and/or weight shall be admissible.
2. The Purchaser's order is deemed to constitute its binding intention to purchase the goods ordered. A legally binding contract is deemed to have been concluded if and when confirmed by Mikron in writing or electronically through a confirmation of order received by the Purchaser. Unless otherwise expressly agreed, the contract is concluded on the *provisio* that Mikron receives its supplies correctly and timely. This shall only apply to the extent that we cannot be held responsible for the reasons underlying a non-delivery, especially if a congruent transaction has been concluded with our supplier. The Purchaser will be informed forthwith if performance is not available. Consideration already provided shall be reimbursed.
3. Orders placed by electronic means shall not be necessarily confirmed by us by the same means. Neither shall Mikron be obliged to make available means enabling the Purchaser to recognize and if necessary correct typing errors prior to placing its order. In addition, we are not obliged to communicate specific contractual information also electronically to the Purchaser before placing its order by electronic means. We refer to our standard business terms, including the present Conditions that can be downloaded from the Mikron Holding Homepage: www.mikron.com. If and when an order

placed by electronic means is confirmed by way of an electronic confirmation of order, the contractual terms of this order will be stored in an accessible and reproducible format.

III. Scope of Delivery

1. The scope of the delivery shall be solely determined by our written or, as the case may be, electronic confirmation of the order. Amendments, collateral agreements and/or modifications also require Mikron's written / electronic confirmation.
2. Any documents on which the confirmation of the order is based, e.g. calculations, drawings, estimates and technical data are approximate only and, as a rule, do not constitute a guarantee undertaking ("*Garantieversprechen*") within the meaning of German law, unless otherwise expressly referred to as such in the confirmation.
3. Partial deliveries are admissible.
4. Mikron is entitled to carry out technical improvements, provided that this does not increase the price.
5. Tender documents, plans, drawings, cost estimates, and technical documents – also if stored electronically – shall be protected as business secrets and must not be published, duplicated or passed on or made accessible to third parties in writing; they shall be returned and/or deleted if so requested. The same applies to our software.

IV. Price, Payment and Default in Payment

1. Unless otherwise specifically agreed, prices quoted are binding and apply ex works, including loading in the works and excluding packaging. The prices do not include value added tax at the then applicable rate.
2. Payment methods are agreed individually. Unless otherwise specifically agreed, payment shall be made cash, without any discounts, to the place of payment designated by Mikron as follows:

1/3 down payment following receipt of the confirmation of the order,
2/3 upon notification to the Purchaser that the main parts are ready for dispatch
3. Partial payments become due immediately upon receipt of our invoices by the Purchaser pursuant to para 2 above. The Purchaser is deemed to be guilty of default upon reminder after payment is due; if no reminder is sent, default occurs 10 days after payment has become due.
4. For as long as it is in default, the Purchaser shall pay interest on the amount due of 8 percentage points above the basic interest rate. Where Mikron can prove that the damage incurred is higher, we shall be entitled to claim it.

5. The Purchaser may not retain payments or set off payment due to counterclaims disputed by Mikron, unless the Purchaser's counterclaim can no longer be legally contested.
6. Deviating from Art. 2 above, Mikron shall be entitled to demand partial or total prepayment or a security interest to be granted or withdraw from the contract if it learns of an impairment of the economic status of the Purchaser.

V. Delivery Period, Delayed Delivery

1. The delivery period is as agreed between the Parties to the contract. Mikron shall be bound to observe the period set, provided that all commercial and technological questions between the parties to the contract are solved and the Purchaser has fulfilled all of its obligations, including, without limitation, provision of required technical and official authorizations and/or approvals and transfer of the agreed down payment. In the negative, the period for delivery shall be extended appropriately. This shall not apply to the extent that Mikron is responsible for the delay.
2. The delivery period is accepted on the *proviso* that Mikron receives its supplies correctly and timely.
3. The period for delivery is deemed observed if, upon its expiry, the goods have left the Mikron works in Rottweil or the goods' readiness for dispatch has been notified. Except in the case of a justified refusal, acceptance, if any, shall be carried out at the acceptance date, or alternatively following the Supplier's declaration of readiness for acceptance.
4. The delivery period shall be extended by a reasonable period of time in the event of circumstances such as industrial action, particularly strike and lock-out, or the occurrence of unforeseen hindrances, which are beyond Mikron's control providing such hindrances can be proven to have a significant influence on the completion or delivery of the goods. This shall also apply if any such circumstances arise with respect to Mikron's suppliers. The aforementioned circumstances shall also be deemed to be beyond Mikron's control if they occur during an existing delay. In significant cases, Mikron shall inform the Purchaser of the commencement and end of such hindrances as soon as possible.
In the event that the Purchaser incurs damage as a result of a delay for which Mikron is responsible, the Purchaser may claim a lump-sum compensation. It shall amount to 0.25 percent for each full week of delay up to a maximum of 5% of the value of those parts of the overall delivery which cannot be used in time or in accordance with the contract as a result of the delay. Additional damage shall be reimbursable only if expressly provided for in Art. X below.
6. No compensation shall be payable for delayed deliveries of third-party suppliers specified by the Purchaser.
7. The Purchaser shall make all payments at the initial due date if delivery and/or completion is delayed for reasons for which the Purchaser is responsible. Mikron is then entitled to store the goods and may charge the Purchaser at least 0.5 % of the purchase price for each month of storage. Higher cost shall be reimbursed if proven.
8. Beyond the scope of Art. 6 below, Mikron is entitled to use the goods at its own discretion and/or provide the Purchaser with the goods after a reasonably extended period for delivery and/or withdraw from the contract and claim damages for non-fulfillment if the Purchaser still fails to fulfill its contractual obligations and a reasonable period set expires without any results being provided. Damage shall be considered to amount to 20 % of the contract price, unless higher damage can be proven. Damage shall be set off against down payments received. This rule also applies if we withdraw from the contract at a stage where the goods are

already being made. If it does not agree, the Purchaser has the right to prove that no or less damage has been caused.

VI. Transfer of Risk

1. The risk of accidental loss or deterioration of the goods shall pass on to the Purchaser upon handing over, in the case of a mail-order purchase ("*Versendungskauf*") when the goods are handed over to the carrier, forwarder or other person or body corporate appointed to effect the transport. This shall also apply in the case of partial deliveries or if Mikron has assumed additional obligations, e.g. to pay transport cost or effect delivery, erection or setup.

At the request and cost of the Purchaser, dispatch shall be insured by Mikron against theft, breakage, transportation, fire and water damage and other insurable risks.
2. In the event that dispatch is delayed due to circumstances attributable to the Purchaser, the risk shall pass to the Purchaser upon the day of readiness for dispatch, Mikron, however, shall be obliged, at the Purchaser's request, to take out any insurance requested by the latter.
3. Notwithstanding its existing warranty rights ("*Gewährleistungsrechte*"), items delivered are to be accepted by the Purchaser, even where minor defects are detected.

VII. Retention of Title

1. Mikron reserves title to the goods until it receives full payment of all claims due from an ongoing business relationship. Upon request, the Purchaser shall provide a deed proving the agreed retention to the retained goods and hand the deed over to Mikron. If so requested by Mikron, or if a petition for the Purchaser's insolvency is filed, the retained goods shall be marked clearly with a label "Property of Mikron GmbH".
2. The Purchaser shall treat the retained goods with diligent care. The Purchaser shall carry out any necessary regular maintenance and inspection work at its own cost.
3. Mikron shall be entitled to take out insurance for the goods against theft and damage resulting from breakage, fire, water or other risks, at the cost of the Purchaser, provided that the Purchaser cannot prove to have obtained such protection.
4. The Purchaser shall neither pledge the goods nor use them as collateral. It shall notify Mikron forthwith of any pledges or seizures or other dispositions of third parties.
5. Mikron shall be entitled to withdraw from the contract and claim the goods back if the Purchaser is in breach of the contract, in particular if it defaults in payment or does not fulfill obligations stipulated in paras 2 to 4 inclusive of this provision.
6. The Purchaser may resell the goods within the ordinary course of its business. The Purchaser herewith assigns to us any claims equivalent to the value invoiced which the Purchaser may have against a third party from such resale. Mikron herewith accepts this assignment. Following the assignment, the Purchaser shall be entitled to collect the debt. Mikron reserves the right to collect debts by itself, provided that the Purchaser does not duly meet payment obligations and defaults in payment.
7. Any processing or amalgamation of the goods by the Purchaser shall be considered effected on behalf of Mikron. If the goods are combined with goods that are not the property of Mikron, we shall acquire co-ownership in the new item in proportion of the value of the new item to the

value of the supplied goods used. The same applies *mutatis mutandis* if the goods are amalgamated with other items to which Mikron has no title.

VIII. Acceptance

1. Unless otherwise agreed, acceptance of the goods shall take place in the form of a pre-acceptance test upon declaration of readiness for dispatch at the Mikron works and in the form of final acceptance following installation and set up at the works of the Purchaser. The Purchaser shall ensure that adequate structural requirements for installing the goods exist. All other aspects of acceptance shall be governed by the Mikron "Conditions for the Acceptance Procedure of Machinery" and will be summarized in the acceptance minutes.

If acceptance is not successful, Mikron shall be entitled to examine the goods and remedy the defect within a reasonable period, upon which the acceptance procedure is repeated. Minor defects or malfunctioning that do not considerably impair the use of the machine shall be remedied by Mikron at short notice. The Purchaser shall not be entitled to refuse to accept the goods due to such defects.

Furthermore, acceptance is deemed to have taken place if testing is omitted due to reasons for which Mikron is not responsible or because the Purchaser refused to take acceptance without cause. Acceptance is then deemed to have taken place at the time when Mikron declares its readiness for acceptance to the Purchaser in writing, or when the Purchaser would have been able to put the goods into operation for the first time. In any case, acceptance shall be deemed to have taken place when the Purchaser unreservedly puts the goods into operation.

IX. Warranty ("Gewährleistung") and Non-fulfillment

1. Excluding any other claims in respect thereof, Mikron shall, at its own option, repair or replace defective goods. Parts that prove to be defective due to circumstances having occurred prior to the passing of the risk shall be repaired or replaced at no charge. Defects detected shall be notified to Mikron without undue delay and in writing.
2. Upon agreement with Mikron, the Purchaser shall grant Mikron the time and opportunity required to carry out any repair work and/or replacements deemed appropriate by Mikron; otherwise Mikron shall be released from its liability and any consequences thereof. Only in urgent cases putting at risk the safety of the works or, as the case may be, for the purpose of combating disproportionate damage – whereupon Mikron shall be notified forthwith – shall the Purchaser be entitled to remove the defect by itself or have it removed by a third party and claim from Mikron compensation of the necessary cost incurred.
3. The Purchaser shall report in writing apparent defects within a period of two weeks following receipt of the goods to assert a valid claim for warranty. The time-limit set shall be deemed observed if the notification is sent in time. The Purchaser shall have to prove that all the necessary requirements for a valid claim exist, including, but not limited to, requirements relating to the defect itself, the time of its detection and the timeliness of the notification.
4. From the repair and/or replacement cost Mikron shall bear, to the extent that the complaint is found to be justified, the cost for the replacement part, including transport, and all reasonable costs attributable to (dis)assembly and, if reasonable and required in the individual case, costs for its skilled and unskilled labor.
5. If subsequent performance (repair or replacement) is

unsuccessful, the Purchaser may, as a rule, demand that the purchase price be reduced or the contract rescinded (withdrawal), whichever option it prefers. In the case of a minor violation of contract, in particular minor defects, the Purchaser, however, shall have no right to withdraw from the contract.

6. If, following unsuccessful subsequent performance concerning a defective title or a defect (collectively referred to as a defect), the Purchaser chooses to rescind the contract, it shall have no other claim for damages resulting from such defect. If, following unsuccessful subsequent performance, the Purchaser chooses to claim damages, the goods shall remain with the Purchaser unless this would be unreasonable to demand from the Purchaser. Liability shall in no case exceed the difference between the purchase price and the value of the defective goods. This shall not apply if Mikron intentionally caused the violation of contract.
7. The warranty period shall be one year as of the date of delivery. This shall not apply if the Purchaser has failed to notify us of the defect in time (para 2 above).
8. No liability is assumed in the following cases (without limitation):
Unsuitable or inappropriate use, defective installation and/or putting into operation by the Purchaser or third parties, normal wear and tear, inappropriate or careless treatment, faulty maintenance, unsuitable service fluids, defective construction work, unsuitable construction site, chemical, electronic or electrical influences, all for which Mikron is not responsible.
9. As a rule, the agreed quality of the Product shall be solely determined by Mikron's product description in the confirmation of the order. Public utterances, commendations, or promotion, however, shall in no case constitute any statements as to the contractual quality of the goods.
10. Mikron does not offer the Purchaser any guarantees within the meaning of German law. Third-party manufacturers' guarantees shall remain unaffected.
11. The above provisions on warranty-related defects as to quality shall apply *mutatis mutandis* to liability for defects in title.
12. Warranty for parts replaced or repaired shall be subject to a new prescription period of 12 months, capped however, by a maximum of 1,800 hours of operation as of the moment of replacement, completion of the repair work or acceptance, provided that the initial warranty period has not yet expired.

X. Liability

1. Irrespective of the underlying legal reason, Mikron shall be liable for damage to items other than the goods supplied only in the case of intent, gross negligence of corporate committees or executives, fraudulent concealment or guaranteed absence of defects, in cases where the contractor negligently causes damage to life, body or health and liability for death, injuries or damage to items used privately pursuant to the German Product Liability Act ("*Produkthaftungsgesetz*").
In the case of a negligent breach of a condition which goes to the root of the contract, Mikron shall also be liable for gross negligence on the part of its non-executive staff and slight negligence, whereas in the latter case liability is limited to reasonably foreseeable, average und direct damage intrinsic to the contract.
Mikron is not liable for the infringement of minor contractual obligations caused by slight negligence. Any other claims shall be excluded.
2. Claims for damages by the Purchaser with respect to a defect shall be time-barred after one year following delivery of the goods. This shall not apply if Mikron can be accused of bad faith.

XI. Use of Software

To the extent that software is included in the scope of delivery, the Purchaser is herewith granted the non-exclusive right to use the software and documentation supplied. Its use is permitted with respect to the goods supplied. The software shall not be used on more than one system.

The Purchaser shall be allowed to copy, revise or translate the software or convert the object code into the source code only as legally permitted by the German Copyright Act (UrhG). The Purchaser undertakes not to remove manufacturer identification labels – including, but not limited to copyright marks – without having obtained Mikron's prior express consent.

All other rights to the software and documentation, including any copies that may exist, shall remain with Mikron and/or the software supplier. No sublicenses shall be granted.

XII. Venue, Applicable Law, Governing Version

1. The legal relationship between Mikron and the Purchaser shall be subject to German law, under the exclusion of the Vienna Convention (CISG), which is not applicable. The applicability of German law shall also apply to contractual relations with Purchasers outside Germany.
2. The venue is the place of the competent court for Rottweil a. N., including action with respect to deeds, bills of exchange and checks, if the Purchaser is a fully qualified merchant ("*Vollkaufmann*"), a corporate body under public law or a special asset under public law. Mikron shall however, be entitled to sue the Purchaser before any other competent court if appropriate abroad and/or at the venue of the registered office of the Purchaser.

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