

General conditions of sale and supply for plant and machinery

1. **General**
 - 1.1 The following terms and conditions of supply and payment shall be deemed to have been accepted by the customer when he places the order. General conditions of business of the customer and departures from the present conditions shall be valid only if they are expressly acknowledged in writing by MIKRON.
 - 1.2 Save where otherwise agreed, the "Conditions for the machinery acceptance procedure" of MIKRON and the "Terms and conditions for fitting work" applicable to assembly work, including MIKRON's current assembly charge rates, shall be deemed to have been agreed.
 - 1.3 All agreements and declarations of the contracting parties having legal effect shall be valid only if they are made in writing.
 - 1.4 The customer shall not transfer his contractual rights to third parties without the express consent of MIKRON.
2. **Scope of supply**
 - 2.1 The deliveries and services to be provided by MIKRON are listed in the order confirmation, together with any attachments thereto, in the offer submitted by MIKRON, in so far as reference is made thereto in the order confirmation, and in these general conditions of sale and supply, the Terms and conditions for fitting work and the Conditions for the machinery acceptance procedure (see Sec. 1.2). Any changes to the scope of performance must be confirmed in writing by MIKRON.
 - 2.2 Part-deliveries are permitted.
 - 2.3 MIKRON is authorized to make technical changes which lead to improvements, in so far as they do not result in any reduction of performance or in price increases.
3. **Drawings, technical documents and information**
 - 3.1 Technical documents such as illustrations, indications of weights and dimensions given by MIKRON, are only approximate, save where they are expressly stated to be a binding part of the contract pursuant to Sec. 2.1.
 - 3.2 The customer has sole responsibility for ensuring that the structural conditions exist on his premises for the delivered object to be properly installed. Layouts prepared by MIKRON must be verified by the customer on site.
4. **Regulations in the country of destination – Protective devices**

All plant and machinery, together with the accessories supplied by MIKRON satisfy the regulatory provisions applicable in the European Union. Where deliveries are made outside the EU, the customer shall draw the attention of MIKRON in writing to any different regulatory provisions and standards applicable to him, at the latest when the order is placed. Where modifications are notified in due time, MIKRON shall perform them at the cost and risk of the customer, in so far as operational safety is safeguarded.
5. **Prices, terms of payment**
 - 5.1 All prices are quoted in freely disposable Swiss francs, exclusive of packaging and value added tax, for delivery strictly net ex-works, excluding installation and ancillary costs of all kinds and without any deductions or costs relating to letters of credit, bank guarantees, cashing, collection of documents etc., which shall be charged to the customer. All ancillary costs, such as packaging, insurance, transport and customs duties etc., shall be refunded by the customer to MIKRON against supporting documents if MIKRON has been obliged to pay them.
 - 5.2 The purchase price shall be paid in compliance with the agreed payment terms. The payment dates shall be respected, even if minor parts of the deliveries and performance are lacking, or if subsequent work has proved necessary but does not prevent the delivered goods from being used.
 - 5.3 In the case of part-deliveries, instalment payments shall fall due when goods are ready for despatch.
 - 5.4 If the customer is in arrears with his payments, he shall be required to pay interest at the discount rate of the Swiss National Bank plus 5%, from the date on which the agreed payment fell due. MIKRON shall not be required to perform its obligations until the overdue payments have been received. Arrears shall automatically be calculated after the expiry of 30 days from the date of the invoice, even without special warning.
 - 5.5 Arrears of payment in one case shall automatically cause all the other claims accruing to MIKRON against the customer to fall due. The withholding of payments, or offsetting of any counterclaims of the customer which are contested by MIKRON, shall not be permitted; the enforcement of rights of retention, in or in connection with, the delivery shall likewise be prohibited.
 - 5.6 If a significant deterioration in the financial situation of the customer becomes known, MIKRON may stipulate advance payments, in whole or in part, or require security to be put up; alternatively, it may withdraw from the contract.
 - 5.7 Instalment payments made shall not earn interest; neither shall they be regarded as a penalty whose payment entitles the customer to withdraw from the supply contract.
6. **Reservation of ownership**

The customer undertakes to cooperate in any measures necessary to secure the property, in so far as MIKRON declares, before the completion of final acceptance of the deliveries, that it is not prepared to allow ownership of the purchased goods to be transferred to the customer before payment of the purchase price in full.
7. **Transfer of risks, insurance, acceptance**
 - 7.1 The risk shall be transferred to the customer on notification of readiness for despatch and, if no such notice is given, at the latest when the deliveries and services leave the works. This shall likewise apply if despatch is deferred at the request of the customer or for other reasons that are not attributable to MIKRON.
 - 7.2 If the customer fails to accept the deliveries and performance within 20 days of preliminary acceptance or declaration of readiness for despatch (see Sec. 9), the goods shall be insured and stored or delivered by MIKRON at its own discretion for the account and risk of the customer.
 - 7.3 Delivered goods shall be accepted by the customer without prejudice to any guarantee claims. The customer shall check the packages on arrival at the destination, secure evidence and report any visible damage immediately in writing to MIKRON. If he fails to do so, the delivery shall be regarded as having been accepted as far as its condition and completeness are concerned.
 - 7.4 If the packaging shows damage, the customer shall take all measures necessary to secure the goods against further imminent damage or to limit damage that has already occurred.
8. **Delivery lead time - Elements to be provided by the customer**
 - 8.1 The contractor's agreed delivery lead time shall not under any circumstances begin to run before contractual presentation of all the approvals, authorization and clearances, complete receipt from the customer of the information and documents necessary for performance of the contract (in particular technical specifications etc.) and, in all cases, not before receipt of any agreed instalment payment and provision of a contractual guarantee of payment.
 - 8.2 The delivery lead time shall be deemed to have been respected if notification of readiness for despatch has been given when it expires.
 - 8.3 In so far as the customer fails, during manufacture of the goods and services, to provide items to be supplied by him (such as specimen parts etc.) or process devices in the desired quality and quantity, MIKRON may invoice the resulting additional costs to the customer. In the event of failure to provide these elements on time, a new delivery date shall be agreed between the customer and MIKRON.
 - 8.4 In so far as MIKRON is unable to perform its contractual obligations on time for reasons of force majeure or other reasons beyond the control of MIKRON, such as natural disasters, acts of war, governmental measures, failure of means of transport, failure of sub-contractors to deliver etc., the corresponding contractual obligation shall be deemed to be in abeyance until the obstacles have been removed, without the customer thereby acquiring any entitlement to compensation.
 - 8.5 In the event of late delivery, the customer shall have no entitlement to compensation or cancellation of the contract. If MIKRON is responsible for late performance, the customer shall be entitled, in respect of the late parts of the delivery and to the exclusion of any further claims or secondary damages, to require, for each full week of delay, payment of 0.25%, subject to a maximum of 5%, of the value of that part of the overall scope of supply which was not delivered on the contractual terms as a result of the delay. The first four weeks of delay shall not, however, give any entitlement to compensation for late performance.
 - 8.6 If preliminary acceptance, despatch or final acceptance are delayed for reasons attributable to the customer, the latter shall still be required to make the payments stipulated on the basis of the original delivery date.
 - 8.7 In the case of late delivery, which is not attributable to reasons for which MIKRON is responsible, MIKRON shall be entitled to place the delivered goods in storage at the cost of the customer and/or to invoice the additional costs accruing to it as a result of the delay (e.g. in connection with rescheduling, overtime etc.), together with any other damages.

- 9. Verification, preliminary and final acceptance and clearance of the delivered goods for production purposes**
- 9.1 Save where otherwise agreed, preliminary acceptance shall take place on the premises of MIKRON, by agreement with the customer, within ten days of notification of readiness for despatch being given by MIKRON. Final acceptance shall take place on the customer's premises. Preliminary and final acceptance shall be effected in accordance with "conditions for the machinery acceptance procedure" and shall end with the compilation of a preliminary or final acceptance report.
- 9.2 The customer shall not withhold acceptance and signing of the preliminary or final acceptance report by reason of minor defects, in particular those which do not significantly impair the functional quality of the delivered goods and services. Such shortcomings shall be made good by MIKRON within a reasonable period. Defects which could not be recognized at the time of preliminary or final acceptance shall be notified by the customer to MIKRON in writing as soon as they are detected, failing which the items concerned shall be deemed to have been accepted. MIKRON shall not be liable for defects which are notified after expiry of the warranty period.
- 9.3 If final acceptance does not take place at the latest within three months of delivery of the machinery for reasons which are not attributable to MIKRON, said machinery shall be deemed to have been definitively accepted by the customer.
- 9.4 Should defects occur, the customer shall in all cases allow MIKRON to verify the goods supplied and the repairs made thereto pursuant to Section 10 of these conditions.
- 9.5 The customer undertakes not to use the machinery for production purposes without the written approval of MIKRON before the final acceptance report has been signed or before definitive final acceptance has taken place.
- 10. Warranty, liability for defects**
- 10.1 Notwithstanding the provisions of Sections 10.2 to 10.5, the warranty period shall be twelve months or 3,500 operating hours. It shall begin to run on the date of final acceptance, or at the latest three months after delivery by MIKRON. For deliveries of goods and services which are not brought into service on the operating site by MIKRON, or by fitters specifically authorized by MIKRON, or which have been used for productive purposes before definitive final acceptance without the consent of MIKRON, the latter shall give no warranty. The warranty period on repaired or replaced components begins to run for a further period of six months from the date of replacement, completion of repairs and acceptance or at the latest until the end of the warranty period for deliveries and services.
- 10.2 The warranty shall expire immediately if the customer or third parties operate the delivered goods inexpertly, undertake inexpert modifications or repairs, fail to use original MIKRON replacement parts during the warranty period or do not give MIKRON an opportunity to remedy the defect itself. In addition, the customer shall make sure that the damage is not allowed to become more extensive.
- 10.3 MIKRON undertakes, at the written request of the customer, to repair or replace as quickly as possible at its own discretion and in its own works, all parts of the MIKRON deliveries which demonstrably become defective or unusable due to poor material or inadequate workmanship before the expiry of the warranty period. Replaced components shall become the property of MIKRON.
- 10.4 Special suitability for an intended use or the assurance of a particular performance capability exists only where such an assurance has been given contractually in express and direct terms. Such an assurance presupposes use of the delivered goods and services for their intended purpose and in compliance with all the contractually agreed functional parameters. On the completion of final acceptance of the delivered goods and services pursuant to Section 9, evidence of suitability for the intended purpose, or assurance of a particular performance capability of the goods and services, shall be deemed to have been definitively provided or given. If the assured properties are not satisfied, or only satisfied in part, on final acceptance of the goods and services, the customer shall solely be entitled to repairs by MIKRON within a reasonable period. For this purpose, the customer shall grant MIKRON the necessary time and opportunity. Should this repair prove impossible in full or in part, the customer shall only be entitled to a suitable price reduction.
- 10.5 The warranty and liability do not extend to damage which has not demonstrably been caused by poor materials, defective design or inadequate workmanship, e.g. as a result of natural wear and tear, defective maintenance, failure to comply with operating or safety instructions, excessive strain, unsuitable working materials, chemical or electrolytic influences, building or assembly work which was not performed by MIKRON or its sub-contractors and for any other reasons not attributable to MIKRON itself.
- 10.6 In the case of goods and services provided by sub-contractors who were prescribed by the customer, MIKRON shall only give a warranty within the framework of the warranty obligations of such sub-contractors.
- 10.7 In respect of material defects, poor design or workmanship and failure to comply with assured characteristics, the customer shall have no rights and claims apart from those expressly stated in Section 10 and in no case amounting to more than the value of the defective parts of the delivery.
- 10.8 Liability for consequential damages resulting from defects and damages to property of all kinds e.g. loss of production, loss of use, loss or orders, loss of profit, failure to perform or effective breach of contract, or claims for compensation made by way of redress - together with all other direct and indirect damage - is hereby expressly excluded. This exclusion of liability shall not apply to wilful intent or gross negligence on the part of MIKRON, but it shall apply to wilful intent or gross negligence on the part of servants. This exclusion of liability shall also not apply where binding legal provisions stipulate otherwise.
- 10.9 MIKRON shall only be liable for claims by the customer on grounds of incorrect advice etc. or infringement of any ancillary obligations in cases of wilful intent or gross negligence.
- 11. Protected rights**
- 11.1 In the case of series-manufactured components forming part of MIKRON's scope of supply, MIKRON shall be responsible for assuring that the acquisition or use of the delivered object, or parts thereof, does not infringe the patent rights of third parties in the customer's own country. MIKRON shall be entitled to contest or otherwise settle purported claims of third parties in or out of court in any appropriate manner. The customer shall grant due authority to MIKRON for that purpose. In the case of equipment components specific to the customer, and for the deliveries and services as a whole, MIKRON declines all liability, as it is impossible for MIKRON to make sure that the patent rights of third parties are not affected or infringed.
- 11.2 The customer gives a full guarantee that the manufacture of objects according to his specifications does not infringe the protected property rights of third parties; he undertakes to release MIKRON from any resulting claims on grounds of infringement and claims for compensation.
- 11.3 Each contracting party reserves all rights in calculations, drawings and technical documents made available by him to the other party. The receiving contracting party acknowledges these rights and will treat the relevant documents as his own business secrets and refrain from using them otherwise than for their intended purpose for which they were made available.
- 11.4 The customer shall be entitled to use the software, drawings, know-how and documentation himself to the stipulated extent, but shall not make them available to third parties or make copies. Any extension or modification of the software or its use otherwise than for the intended purpose by the customer shall require the prior written consent of MIKRON.
- 12. Environmental and operational safety**
- 12.1 The customer undertakes to comply with the operating instructions and safety rules handed over with the delivered goods, and to instruct his own personnel accordingly, so as to permanently guarantee the safe and environmentally-compatible operation of the delivered goods.
- 12.2 Existing safety instructions and danger notices on the machinery must not be removed. Instructions which are poorly secured or have been damaged, must be refixed or replaced immediately. MIKRON undertakes to replace unusable safety instructions for the customer at any time and to make the requisite number of copies available. Improvements to the safety instructions shall be accepted and respected by the customer at all times, at the request of MIKRON.
- 12.3 Technical modifications to machinery, in particular if they are liable to endanger safety of operating personnel or of the environment, shall only be made with the written consent of MIKRON. If that consent is withheld, they shall be removed immediately.
- 12.4 The customer shall inform MIKRON without delay if an accident involving the delivered goods has occurred, or if it transpires that operation of the delivered goods presents a risk.
- 12.5 If the customer fails to comply with any of these requirements for the preservation of environmental and operational safety, he shall release MIKRON from all the resulting obligations to provide compensation to third parties.
- 13. Applicable law, place of jurisdiction**
- 13.1 The legal relationship shall be governed by substantive Swiss law. Incoterms shall apply additionally.
- 13.2 It is hereby agreed that **courts of Boudry**, by which MIKRON is governed, shall have jurisdiction.