

# General Terms and Conditions of Sale, Delivery and Services of Mikron GmbH Rottweil

## § 1 Scope of Terms and Conditions, Exclusion of Conflicting Terms and Conditions

- (1) Our General Terms and Conditions shall apply to all our offers, deliveries and services (hereinafter referred to as "GTC"). The following Terms and Conditions shall only apply to entrepreneurs according to Section 14 German Civil Code, legal entities under public law or an asset under public law (hereinafter referred to as the "Customer").
- (2) Our GTC shall apply exclusively. We shall not accept different general terms and conditions of the Customer unless they have been confirmed by us in writing.
- (3) Our GTC shall also apply if we effect delivery without reservation while being aware of conflicting or different general terms and conditions of the Customer.
- (4) Within a permanent business relationship, our GTC shall also apply to all our future offers, deliveries and performances relating to the Customer without requiring any further reference or agreement.

## § 2 Conclusion of Contract, Scope of the Delivery, Prohibition of Assignment

- (1) As a general rule, our offers are free of charge and non-binding, unless agreed upon otherwise in writing. Any deal or agreement requires our written acceptance of order or our delivery of the goods. The same shall apply to any amendments, changes or side agreements.
- (2) Unless agreed upon otherwise, the conclusion of a contract is subject to the condition of correct and timely self-supply by our suppliers. This shall only apply if we are not responsible for the non-delivery, especially if a **congruent** agreement has been made with our suppliers. The Customer shall immediately be informed about the non-availability of the goods and services. Any goods and service already rendered shall be refunded.
- (3) Our written acceptance of order or, in the event of lack of such acceptance of order, our offer shall be authoritative for the scope of delivery and the service to be rendered.
- (4) Any requests for subsequent amendments or supplements of a customized product have to be made in writing. In such case, the Parties shall discuss the implementation of the proposed changes and its possible effects on performance time and remuneration. We are only obliged to carry out a proposed change in performance if we have agreed to it in writing.
- (5) All information about our products, in particular pictures, sizes, performance criteria and any other technical data contained in our offers and brochures shall be regarded as approximate average values. Tolerances in shape, colour, quantity, weight, number of pieces and dimensions customary in this line of business are expressly reserved.
- (6) All documents and data on which our offer is based, such as technical drawings, illustrations, descriptions, weights and sizes, shall only be binding if expressly agreed upon in writing. We reserve the right to make minor changes and modifications to the extent such changes or modifications do not substantially impair the purpose of the contract and the delivery.
- (7) All documents on which our offer is based, plans, drawings, estimates of costs and other documents – also in the electronic form - remain our property and may neither be retained, nor copied or otherwise reproduced or made available to third parties by the Customer and have at our option either to be handed out to us or have to be deleted immediately upon our request. Even if we leave these documents to the Customer, our intellectual property rights remain unaffected hereby. This applies accordingly to software.
- (8) The Customer shall not be entitled to assign any claims against us without our prior written consent. The same shall apply to any of the Customer's claims against us in connection with the contractual relationship which have arisen by operation of law.
- (9) With respect to materials provided by the Customer, we are only liable according to § 8.
- (10) For products manufactured according to the Customer's specifications (e.g. drawings, samples or other instructions) we are only liable for the actual manufacture.
- (11) We are not liable that the product manufactured according to the Customer's specifications is suitable for the purpose of the Customer and cooperates with his existing components.
- (12) The Customer bears the sole responsibility for the drawings, gauges, samples and the like which have to be provided by him. The Customer is liable for ensuring that the working drawings supplied by him do not infringe the intellectual property rights of third parties. The Customer shall indemnify us from all such claims of third parties.
- (13) Unless agreed upon otherwise, call orders shall be called off and accepted within 12 months following the conclusion of the contract.

## § 3 Delivery Times

- (1) If a term of delivery is agreed, such term shall begin at the earliest with the date of conclusion of contract, however not before complete clarification of all commercial and technical questions and not before the Customer has fulfilled all his duties, e.g. delivery of all necessary technical and official documents and approvals, the provision of necessary raw materials or other materials or receipt of any advance payments that may have been agreed upon.
- (2) The observation of the delivery time is subject to the condition of correct and timely self-supply.
- (3) If we should be unable to make a delivery due to reasons caused by the Customer, a term of delivery shall be deemed complied with if the item to be delivered has been handed over to a person in charge of the transport or has been notified to the Customer as ready for dispatch before such term of delivery has expired.
- (4) A term of delivery shall be extended appropriately in the event of Force Majeure or any unforeseen obstacles which affect us or our suppliers. Such an unforeseen and extraordinary obstacle shall be particularly given in the event of unrest, strike, lock-out, fire, confiscation, embargo, statutory or official orders and constraints or incorrect and/or delayed self-supply, if and to the extent such obstacles have not been caused by us and such obstacles have influence on our ability to timely fulfil our obligations under the contract. If due to such circumstances the term of delivery shall be extended for a commensurate period of time, the Customer shall be entitled to withdraw from the contract after expiry of such extended term of delivery. If the Customer is interested in partial performance of the contract, he may withdraw from such part of the contract that is yet unfulfilled. If we have already performed in part, the Customer may only withdraw from the entire contract if the

Customer can evidence that he has no interest in partial delivery and/or service by us. Further statutory or contractual rights to withdraw from the contract remain unaffected hereby.

- (5) If we should be in delay of delivery and after a reasonable grace period defined by the Customer has expired unsuccessfully, the Customer shall be entitled to withdraw from the entire contract or, if the Customer is interested in partial performance of the contract, withdrawal from such part of the contract that is yet unfulfilled. Further claims of any kind, in particular claims for damages based on bad performance or damage caused by delay, are excluded, unless provided for otherwise in § 8 below. If and to the extent we are liable for damages caused by delay according to § 8, the amount of damages is limited to an amount of 0,25 % per each full week of delay, in the aggregate not more than 5 % of the value of that part of the delivery that cannot be used on time or in compliance with the contract due to the delay.
- (6) Deliveries before the delivery date and partial deliveries are permitted to a reasonable extent.
- (7) If the delivery is delayed due to the Customer's fault or if the Customer violated other cooperation duties, we are entitled to claim for damages including any additional expenditure. Further claims and rights remain unaffected hereby.
- (8) If the delivery is delayed to the Customer's fault, the Customer shall nevertheless make the payments which depend on the original delivery date. We shall then be entitled to store the delivery good and to charge at least 0,5 % of the purchase price per month as storage costs to the Customer. The right to claim for further damages remains unaffected hereby.
- (9) In addition to subsections (7) and (8) above, we are entitled to withdraw from the contract after a reasonable grace period defined by us has expired, and to dispose of the delivery item elsewhere and to demand compensation for the damages suffered by the non-fulfilment, if the Customer should be in delay with the fulfilment of his contractual duties. There's no need for setting a grace period if the Customer seriously and definitively refuses the acceptance or if he is obviously unable to pay the purchase price or to accept the delivery item within such extended time. 20 % of the contract amount shall be deemed to be the amount of damages. The amount of damages shall be set off against the advance payment. The Parties are free to demonstrate that the damage suffered is actually higher or lower than this amount.
- (10) The validity of the contract of supply and the delivery of the products might be subjected to export control and subordinated to the release from the competent authorities of the authorizations to the export. Mikron shall have no liability in relation to any obligation under the contract of supply in the event the export authorization is denied or recalled.

## § 4 Prices, Payments, Partial Payments

- (1) Unless agreed upon otherwise, our stipulated prices shall be on an "Ex Works", Incoterms 2010, basis and are net prices excluding VAT at the rate applicable at a time (even if not separately shown), costs for packaging, freight, assembly, postal charges, insurance costs, customs duties, any costs for bank or payment transactions as well as any other additional costs which will have to be paid in addition.
- (2) Unless agreed upon otherwise, payments for the delivery of goods are due as follows:
  - 30% as a down payment to be paid concurrently with the placement of the purchase order by the Customer;
  - 30% in payment of the engineering activity, to be paid upon the completion thereof;
  - 30% in payment of the completion and assembly of the good, to be paid concurrently with the commissioning test at Mikron;
  - the balance, i.e. 10%, to be paid concurrently with the commissioning for final acceptance in the Purchaser's premises, at latest one month after delivery by Mikron.Payments for services shall be due for payment according to subsection (3) below.
- (3) Our invoices are immediately due for payment without any deduction.
- (4) At the latest 30 days after the receipt of the invoice, the Customer shall be deemed in delay unless circumstances exist (e.g. reminder or a shorter payment term or a payment term determinable by calendar) that cause the Customer to be deemed in delay. When the Customers is in delay of payment, the Customer shall pay interest at a rate of annually 8 percentage points above the base interest rate.
- (5) In the event of delay of payment, we are entitled to make any further deliveries dependant on the complete settlement of such outstanding payments.
- (6) Unless agreed upon otherwise in writing, we are entitled to unilaterally raise the prices and/or charges for freight in the event of substantial increases of salaries, prices of raw materials and supplies, energy costs, costs for freight and customs duties or other materials. The same shall apply to contracts for the performance of a continuing obligation.
- (7) If payment terms are not complied with or circumstances become known or visible which give reason to doubt the credit worthiness of the Customer including facts which already existed at the time of the conclusion of the contract, but which were not known by us or which of which we didn't have to be aware of, we are entitled to refuse our performance and to demand advance payments or the provision of adequate securities for outstanding deliveries and to withdraw from the contract after a reasonable grace period to provide such securities has expired; further statutory rights remain unaffected hereby. The Customer shall be liable for all damages incurred by us by the non-fulfilment of the contract.
- (8) Upon delay of payment of our Customer, suspension of payment or the opening of an insolvency proceeding with respect to the Customer's assets, all our claims become immediately due for payment. This applies also in the event of agreed terms of credit or if the claim is not yet due for payment for some other reason. Furthermore, this shall apply irrespective of the term of a draft which we have accepted.
- (9) The Customer may only offset receivables due to us with counter claims, if such counter claims are undisputed or have been established by a court of law in an unappealable manner.
- (10) Cheques and drafts will only be accepted as means of payment after previous agreement in writing. Any costs incurred by us resulting from such a payment shall be borne by the Customer.
- (11) All payments have to be made exclusively to us in the EURO currency. Any exchange rate risks shall be borne by the Customer.

## § 5 Passing of Risk, Dispatch, Packaging

- (1) Unless agreed upon otherwise in writing, our deliveries are carried out on an Ex Works, Incoterms 2010, basis.
- (2) The risk of accidental loss passes to the Customer no later than when the delivery item is handed over to the person in charge of the transport. This shall also apply if we are in charge of the transport even if we bear the costs for packaging and shipment. If the delivery is delayed due to reasons caused by the Customer, the risk already passes to the Customer on the day we have informed the Customer that the delivery item is ready for dispatch.
- (3) We may at our discretion determine the method of packaging, unless agreed upon otherwise in writing.
- (4) A transit insurance for the goods shall only be concluded upon the Customer's written request and charge.

## § 6 Retention of Title

- (1) We retain the title to all goods delivered by us until complete fulfillment of all claims resulting from the business connection with the Customer including claims resulting from cheques and drafts. If payment is agreed upon with the Customer on the basis of cheque-draft-procedure, the retention of title shall last until the danger of recourse has ceased to exist.
- (2) The Customer shall at all times upon our request as well as in case of a petition of insolvency proceedings mark the delivered item subject to retention of title visibly as "property of Mikron GmbH Rotweil".
- (3) The Customer shall handle the goods subject to retention of title with care; in particular, he shall adequately insure these goods at replacement value against damages caused by fire, water and theft. If and to the extent maintenance and inspection services are required, these services shall be effected by the Customer in a timely manner.
- (4) Any processing of the delivered goods by the Customer will be done for us as producer according to § 950 German Civil Code. If the delivered item is processed or inseparably connected with other items not belonging to us, we acquire joint ownership of the new goods. The share of the joint ownership corresponds to the relation of the invoice value of the delivered item to the invoice values of the other used items. The Customer is authorized to process the delivered item in the ordinary course of business, provided that the aforementioned security interests are preserved.
- (5) The Customer is entitled to sell the delivered items in the ordinary course of business provided that the extended retention of title (assignment of claims according to subsection 6) is ensured. Any other acts of disposal, in particular transfer, transfer by way of security, pledge or the like shall not be permitted.
- (6) The Customer hereby assigns to us all claims resulting from the resale of the delivered goods to third parties. We hereby accept this assignment. If the good subject to retention of title is jointly owned by us, such assignment shall only relate to the amount of our claims against the Customer.
- (7) The Customer is authorized to collect the assigned claims for the account of us in his own name in the ordinary course of business and only revocably. Any revocation may only occur if the Customer has not correctly fulfilled his duties, in particular his payment duties, if he is insolvent or unable to pay, if he has applied for the opening of an insolvency proceeding or the opening of such proceeding has been refused due to lack of sufficient assets. If the permission to collect has been revoked, the Customer shall notify the debtor of the assignment. Furthermore we are entitled to disclose the extended retention of title to the Customer's client.
- (8) The Customer's authorization to dispose of, to process or to collect the assigned claims shall terminate without express revocation in the event an insolvency proceeding is opened or the opening is refused due to lack of sufficient assets, cessation of payments, a filing for insolvency concerning the Customer's assets by the Customer or a third party or in the event of establishment of inability to pay or over-indebtedness. In these events as well as in the events of § 6 sect. (7) we are entitled to withdraw from the contract and to request the return of the good subject to retention of title after reminder and fruitless expiry of an appropriate additional respite. The Customer is obliged to release such goods. The proceeds resulting from the collection of the goods subject to retention of title minus the collection costs shall be deducted from the obligations vis-à-vis us.
- (9) In the event the Customer's authorization to collect the assigned claims is revoked, the Customer shall immediately disclose to us in writing the name of the assigned claim's debtor and the amount of the claims.
- (10) If the realisable value of the securities allowed according to the above-stated regulations exceeds our claims more than 20 %, we will at our discretion release our securities upon the Customer's request.
- (11) The Customer shall immediately inform us in writing about third parties' access to the goods subject to retention of title, the assigned claims or any other documents and data. Any costs incurred by a legal defence of the goods subject to retention of title including costs vis-à-vis third parties shall be borne by the Customer.

## § 7 Warranty

- (1) We are to be held responsible for material defects and defects of title existing at the time of the passing of risk according to the following provisions.
- (2) Any warranty rights are available to the original purchaser only and may not be assigned to a third party without our consent.
- (3) Certain characteristics are only considered as warranted if expressly confirmed in writing. A guarantee shall only be deemed issued if a characteristic is expressly denominated as "guaranteed" in writing.
- (4) Within the scope of Sections 377, 378 German Commercial Code (HGB), the Customer shall immediately give notice in writing of any kind of obvious material defects, deviations in quantity and false deliveries, at the latest within 14 days after delivery, in any case before connection, mixture, processing or installation; otherwise, the goods are considered to be approved despite these defects, unless we, our legal agents or our vicarious agents have acted with fraudulent intent. The Customer shall immediately give notice in writing of any hidden material defects, at the latest within 14 days after their discovery. In addition, Sections 377, 378 German Commercial Code shall apply.
- (5) The Customer shall give us the opportunity to jointly assess the notified complaints and to be present at any withdrawal for material examination.
- (6) If the delivered item is used for a building according to its intended use and has caused the building's defectiveness, the limitation period shall be 5 years after the passing of the risk. All other claims for defects are subject to a limitation period of 12 months after the passing of the risk.
- (7) Our warranty for defects of quality and defects of title shall be limited to supplementary performance. Within the scope of our supplementary performance obligation, we are entitled, at our discretion, either to remedy the defect (supplementary performance) or to the delivery of faultless material (replacement). If our supplementary performance is delayed beyond a commensurate period of time or if the supplementary performance is unsuccessful despite repeated efforts, the Customer is entitled to reduce the purchase price or to withdraw from the contract. A withdrawal from the contract is excluded if the defect is irrelevant. Furthermore, in the event of faultless partial deliveries, the Customer may only withdraw from the entire contract if he can evidence that he has

no interest in the partial performance. Further claims, in particular claims for reimbursement of expenses and claims for damages, are excluded unless provided otherwise in the following § 8. We shall take title to the replaced parts or, as the case may be, they remain our property and they shall be returned to us upon our request.

- (8) The Customer shall return the defective good to us for subsequent improvement or replacement at his own risk, unless a reshipment is not possible because of the kind of delivery. We shall bear the costs for transportation due to supplementary performance, however only from the place where the good has been delivered to according to the terms of contract and limited by the amount of the purchase price.
- (9) The Customer has to give us the necessary time and opportunity for subsequent improvement or replacement. Only in the event of urgent cases of risk to the plant safety, the protection against unreasonably high damages or delay with the removal of defects, the Customer shall be entitled to cure the defect by himself or by a third party after prior notice and to demand from us restitution of the necessary costs.
- (10) Claims for recourse according to Sections 478, 479 German Civil Code are excluded, unless the claim by the consumer was legitimate and only within the limits of statutory regulations except for gestures of goodwill which were not coordinated with us. Such claims require the observation of own duties of the person entitled to recourse, in particular the observation of the requirement to make a complaint in respect of a defect immediately on receipt of goods.
- (11) The processing or installation of delivered items is always deemed to be a waiver of the notice of defects to the extent the defect was obvious.
- (12) In the event of legitimate notices of defects, payments by the Customer may only be withheld in an adequate proportion to the material defects occurred. In the event of an unjustified notice of defects, we are entitled to demand from the Customer reimbursement of the expenses resulting therefrom.
- (13) Claims based on defects are excluded in the event of minor deviations from the agreed or usual characteristics or utility, e.g. minor deviations in colour, seizures and/or quality or performance characteristics.
- (14) The recognition of a material defect always requires the written form.
- (15) There shall be no warranty obligation if the intended use of the delivery item by the Customer deviates from the common use, unless agreed upon in writing.
- (16) The warranty rights only extend to new products. Unless agreed upon otherwise, used products are sold as is under exclusion of any warranty rights.
- (17) Improper or incorrect use, defective installation or operation by the Customer or a third party, fair wear and tear, defective or careless treatment, improper maintenance, inappropriate operating materials, defective construction works, improper building ground, mechanical, chemical, electronic, electric and comparable influences which do not correspond to the average standard influences are not subject to any warranty rights.

## § 8 Liability

- (1) Our liability for damages, out of which legal reasons whatsoever, is limited to
  - a) our acts of intent or gross negligence including acts of our legal agents and vicarious agents
  - b) culpable injury of life, body, health
  - c) culpable material breach of contract
  - d) if we have intentionally misrepresented the defect by silence or if we have guaranteed the absence of defects
  - e) to the extent we are liable for personal and material damages with respect to privately used items under the German Product Liability Act.

Further claims for damages are excluded.

- (2) A material contractual duty shall be any duty which is necessary for reaching the purpose of the contract or for the proper performance of the contract.
- (3) In the event of a culpable material breach of contract, our liability is limited to losses reasonably foreseeable and typical for this kind of contract.
- (4) The foreseeable loss typical for this kind of contract shall generally be the amount of the contract value of the particular performance.

## § 9 Acceptance with respect to Service Contracts and Contracts of Work and Labour

- (1) Services are generally deemed to be rendered when the work result is handed over to the Customer.
- (2) The Customer shall accept the work produced immediately upon our notice of their completion and, if applicable, a contractual functional test has taken place. If the Customers notices any deviations from the specifications or the agreed upon characteristics, he shall immediately inform us in text form. The notification shall include a reasonably precise description of the ascertained deviation to allow us the identification and removal of the deviation.
- (3) Acceptance may not be refused by reason of minor defects.
- (4) Major defects shall be removed by us as soon as possible and shall be presented to the Customer again for acceptance; the acceptance test shall be limited to the removal of the defects. Minor deviations shall be listed in the acceptance protocol by the Customer as defect and shall be removed within the scope of the warranty.
- (5) If the Customer unjustifiably refuses the acceptance or without giving any reasons, we are entitled to set him a deadline of 14 days to declare the acceptance. The acceptance is deemed to have occurred if the Customer has not accepted the work within this deadline or if he doesn't specify any major defects in writing. In any case, the work shall be deemed accepted if the Customer uses it productively or could use it productively.
- (6) Upon acceptance of the work, our liability for obvious defects ceases to exist, if the Customer has not reserved his rights with regard to the defect when he accepts the work.
- (7) The aforementioned provisions shall apply accordingly to acceptance duties agreed upon in terms of contract for work law.

## § 10 Machines/Equipment

- (1) If the subject matter of the contract is a machine or equipment ("Equipment"), the following provisions shall apply in addition.
- (2) The Equipment complies with the applicable regulations of the country of origin and of the European Community. The Customer shall inform us about any deviating standards and regulations of his country in writing until the time of the shipment at the latest. We will make the necessary changes within a commensurate time at the Customer's cost and risk, provided that the operational safety is preserved.

- (3) If the Customer fails to inform us about any deviating standards and regulations in his country, the Customer shall bear all additional costs resulting hereby.
- (4) If the subject matter of the contract is a customized machine or equipment, we shall start with the detailed planning of the machine or equipment after the conclusion of the contract. The Customer shall provide us with all specifications, documents and technical assistances which are necessary for the construction of the machine or equipment.
- (5) Unless agreed upon otherwise, acceptance of a machine shall take place in the form of pre-acceptance following declaration of readiness for dispatch at Mikron works and in the form of final acceptance following installation and set up at Customer's site.
- (6) The Customer shall ensure that adequate structural requirements for installing the delivery items at his site exist.
- (7) To allow an exact adjustment of the Equipment and a complete and correct machining test, the Customer shall provide us with all requested, necessary elements and raw materials. The delivery of the aforementioned materials shall be carried out on a DDP, Incoterms 2010, basis. We will inform the Customer about the delivery data in good time.
- (8) For each week the Customer is in delay with the delivery of the aforementioned materials, we are entitled to delay the completion of the Equipment for at least 4 weeks.
- (9) The Customer shall follow the operating manual and safety guidelines handed over to him. The Customer shall provide his personnel with adequate training in order to guarantee the safe and environmentally friendly operation of the Equipment. The Customer shall confirm the receipt of the operating manual and the safety guidelines in writing.
- (10) The safety regulations attached to the machines and hazard warnings may not be removed. Poorly fixed or damaged warnings have to be replaced immediately. We will replace to the Customer any security regulations which are no longer usable in appropriate quantity at his cost which shall be replaced by him. Improvements of the safety instructions shall be accepted by the Customer at any time upon our request and shall be complied with.
- (11) Any technical changes to the machines, in particular if they affect the security of the personnel or the environment, shall only be made after our prior written consent. Any modifications made without our consent shall be removed immediately.
- (12) The Customer shall inform us immediately about any accidents on the Equipment or if certain dangers exist in connection with the operation of the Equipment.
- (13) If the Customer does not comply with the aforementioned duties relating to the environmental and operational safety, the Customer shall indemnify us against any third party's claims for damages.

## § 11 Tools

If the subject matter of the contract are customized tools, in particular cutting tools and their accessories, the following provisions shall apply in addition:

- (1) Any sample tools shall only be manufactured after explicit agreement and at an extra cost.
- (2) Production-related excess or short deliveries shall be admissible and the ordered quantity may vary:
  - for orders up to 20 pieces by +/-2,
  - for orders up to 21-39 pieces by +/-3,
  - for orders over 40 pieces by +/-10%.
 The invoice is based on quantity delivered and on the prices for individual item agreed at the time the order is placed.

## § 12 Services and Spare Part Deliveries

If the subject matter of the contract is the provision of services or spare parts, the following provisions shall apply in addition:

- (1) The Customer shall ensure that the Equipment is available to our personnel in a cleaned condition.
- (2) The Customer's maintenance staff and operators shall be available to assist our personnel.
- (3) The Customer shall provide us with additional workers (assistants), tools, devices, lubricants, energy supply, water and the like to the extent necessary for the assignment.
- (4) The Customer shall provide our personnel with a lockable room to store its equipment. Insurance against fire and water damage is the responsibility of the Customer.
- (5) The Customer guarantees that the work on-site shall not be conducted under dangerous or unhealthy conditions, and shall undertake all necessary steps to protect our personnel against all security and health risks.
- (6) Furthermore, the Customer guarantees that our personnel will be correctly informed about the security regulations applicable on-site.
- (7) The delivery date stated is an estimate only.
- (8) The Customer shall be solely responsible for the operation of the machine during the remote maintenance. The Customer shall examine whether the operation required by us is not in conflict to the situation in the machine. This shall also apply during the warranty period of the Equipment. However, this shall not apply if the operating at the workplace is effected by our personnel.
- (9) The Customer shall inform us about the statutory, official and other provisions which apply to the provision of services and the operation as well as to the health protection and accident prevention.
- (10) The Customer shall support our installation personnel in the construction and installation work at his own expense.
- (11) The Customer shall undertake all special measures necessary for the protection of persons and property. He shall also inform our site manager about any existing special security provisions if and to the extent these provisions are relevant for the installation personnel.
- (12) The Customer shall provide technical support at his own expense, including, but not limited to:
  - a) Provision of the necessary appropriate support staff (brick layers, carpenters, locksmiths, skilled personnel, handymen) in the quantity as necessary for the installation and for the necessary time; the support staff has to follow the instructions of our site manager. We are not liable for the Customer's support staff.

- b) carrying out all earth-, building-, foundation and scaffold-work including the provision of the necessary building materials.
  - c) provision of the necessary devices and heavy tools (e.g. hoisting devices, compressors) as well as the necessary utensils and materials (e.g. construction wood, wedges, mats, cement, plaster and sealing materials, lubrication solvents; fuels, driving ropes and belts).
  - d) supply of heating, lightning, operating personnel, water, including all necessary connections.
  - e) provision of necessary, dry and lockable rooms for the storage of tools of our installation personnel.
  - f) transportation of the assembly parts at the assembly area, protection of the construction site and –materials against damaging influences of any kind, cleaning of the construction site.
  - g) provision of appropriate, theft proof recreation rooms and working rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid to our construction personnel.
  - h) provision of material and performance of all other actions which are necessary for the adjustment of the object to be installed and to conduct a contractually envisaged functional test.
- (13) The Customer's technical assistance shall warrant that the installation services of our installation personnel can immediately be started upon their arrival and may be conducted without delay until the acceptance by the Customer.
  - (14) If the Customer fails to fulfil his duties, we are entitled, but not obliged, after the lapse of an adequate deadline to fulfil the Customer's duties in place of the Customer and at his expense. For the rest, our legal rights and claims remain unaffected hereby.
  - (15) Without our prior written consent, the Customer is not allowed to consult our personnel for any work not agreed upon.
  - (16) The Customer is responsible for the regular backup of his data. In the event we are culpably responsible for the loss of data, our liability is therefore limited to the costs which might have arisen in the event of a proper backup of the data, in particular the costs of copying the data from the backups and to restore the data, which might also have been lost in the event of a proper backup; § 8 above remains unaffected hereby.
  - (17) The Customer guarantees the proper disposal of the materials (components, lubricants etc.) which have to be removed after completion of the work on-site.

## § 13 Use of Software

- (1) To the extent that software is included in the scope of delivery, the Customer is herewith granted the non-exclusive right to use the software exclusively in object code and documentation supplied. The use is permitted with respect to the goods supplied. The software shall not be used on more than one system.
- (2) The Customer undertakes not remove manufacturer identification labels – including, but not limited to copyright marks - without having obtained our prior written consent. Customer shall not and shall not allow any person or entity to: remove, modify, copy, reverse engineer, merge, decompile or disassemble the software or install other software on the goods.
- (3) Mikron and its licensors, if any, shall retain title to all software integrated the machine. All other rights to the software and documentation, including any copies that may exist, shall remain with us and/or the software supplier. No sublicenses shall be granted.
- (4) Mikron shall not be responsible for the damage, loss, use of any data recorded, stored, transferred, used on the software by the Customer.

## § 14 Place of Performance, Place of Jurisdiction, Applicable Law

- (1) For all claims arising out of the business relationship between the Customer and us, the place of performance shall be Rottweil a.N., Germany.
- (2) The exclusive place of jurisdiction for all claims resulting from the business relationship including claims from cheques and drafts shall be the place of performance if the Customer is a businessman, a legal entity under public law or an asset under public law. We are also authorized, however, to sue our Customer at his general place of jurisdiction.
- (3) All disputes arising from contracts to which these GTC apply and all disputes arising from business relationship between us and our Customer shall exclusively be governed by German law excluding the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and international private law.

## § 15 Final Clauses

Should one or another provision of these General Terms and Conditions be or become fully or partly invalid, the validity of the remaining provisions shall remain unaffected hereby.

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