

# Terms of Supply Spare Parts



## I. General information

1. These terms of supply are valid for spare parts and services provided by the MIKRON's Service Centre. Any modification as well as amendments, additions and/or different Buyer's general terms and conditions shall be effective only if agreed and expressly accepted in writing by MIKRON.
2. Unless otherwise agreed the "General conditions of sale and supply for plant and machinery" applies to the supply of machines; the "Machine Installation terms" together MIKRON's price lists valid at time of supply are valid for the assembly and installation work.
3. These terms of supply for spare parts are also available on MIKRON 's website, <http://www.mikron.com/terms-and-conditions/>.

## II. Conclusion of the contract

1. All orders and relevant declarations of the parties, as well as all the modifications, must be in writing and signed by MIKRON to be valid.
2. The quotation and its attachments are purely indicative for the Buyer and they must not be considered as an agreement of the characteristics or as acceptance of a guarantee concerning the specifications of the commodities or services described. Disclosure of the quotation and its attachment to any third party is admitted only against prior MIKRON written consent.

## III. Scope of the supply

1. MIKRON shall be bound to supply spare parts and services only in accordance with this terms and conditions and those set forth in the Contract.
2. Any requests from the Buyer for change must be submitted in writing. MIKRON reserves the right to accept the Buyer's request after checking for feasibility of the change. The costs and charges necessary to perform the change shall be borne exclusively by the Buyer. The parties shall determine the new delivery date duly considering the times required for implementing the change.
3. For orders, less than 200 CHF, the Buyer will be charged the total amount of 200 CHF.

## IV. Provisions and safety regulations

1. MIKRON spare parts comply with applicable regulations in force in the European Union. In the event of supplies outside of the EU or special parts, the Buyer must inform MIKRON in writing, no later than the date in which the order is dispatched, of any different rules and regulations. Any change requests submitted in good time will be carried out by MIKRON at the cost and risk of the Buyer, as long as operational safety is maintained.
2. If the Buyer fails to inform MIKRON of different rules and regulations in force or of the necessity to supply special parts or gives wrong information at the time in which the order is released, the Buyer must bear the cost of any change, subsequent supplies or other corrective action that MIKRON may have to provide for. If the Buyer employs a third party to make any change, MIKRON will no longer have any responsibility and the warranty will cease to be valid. MIKRON will be not responsible for defects already known by the Buyer or defects which the Buyer could not have ignored when concluding the contract.

## V. Prices and payments

1. MIKRON supplies will be invoiced at prices and currency valid by MIKRON at the time of the delivery, unless otherwise agreed.
2. In the absence of specific covenants regarding the applicable clause INCOTERMS (2010 edition), all prices are without packing, VAT, assembly or installation costs or extra expenses of any kind and according to clause 'Free Carrier' MIKRON SA Agno (FCA INCONTERMS 2010). The Buyer will bear the costs of insurance and packaging, customs charges, taxes, expenses of any kind incurred outside of the Country of manufacture and related to the supply. If MIKRON is claimed to pay in advance for any of such expenses, the related cost will be refunded to MIKRON against presentation of the corresponding documentation.
3. Unless otherwise agreed in writing all expenses related to credits, bank guarantees, money collection, collection of documents, bill stamps etc. will be borne by the Buyer.
4. If not otherwise agreed in writing, the purchase price must be paid by the Buyer to MIKRON bank account without any deduction and in the currency valid at MIKRON place, at the latest at time of shipment by MIKRON.
5. If no payment has been made within 10 days after the goods are shipped, the Buyer is at fault with no further warning. The Buyer who is in arrears with payments must pay interest on the amount due at the discount rate of the Swiss National Bank plus 5 percentage points starting from the date of expiry reported in the invoice. MIKRON is released from fulfilling its obligations until the arrears have been paid.

6. If MIKRON is informed of a substantial deterioration in the Buyer's economic situation or if detrimental factors arise concerning the Buyer, they may request advance payment or guarantees, for the full amount or part of it, or terminate the contract and withhold the advance payments received from the Buyer by way of compensation for the supply, service or part of it already rendered, without prejudice to the demand for compensation for any damages suffered.
7. The Buyer is not permitted to retain payments or compensate any set-offs objected by MIKRON or to claim retaining rights on the supply or related to the supply.
8. The partial payments made do not accrue interest and their deposit does not consist in a penalty authorizing the Buyer to terminate the order or the supply contract.
9. If the Buyer fails to pay the instalments in credit agreements within the due dates, all the remaining credit will become due immediately.

## VI. Transfer of the risk and title of ownership retention

1. Unless otherwise agreed the risk of natural and/or accidental deterioration and of damage caused to or by the object of the supply shall devolve unto the Buyer according to the clause Free Carrier, MIKRON registered office (FCA INCOTERMS 2010). The same applies for partial deliveries and when deliveries are delayed at the request of the Buyer or for other reasons not attributable to MIKRON.
2. As the risk devolves upon the Buyer, the latter becomes the guardian of the object of the supply. The Buyer shall then be liable for any damages that may arise from or be caused by the goods to himself or to others. Loss or deterioration of the goods that may have occurred subsequent to the transfer of the risk to the Buyer shall not relieve the latter from payment of the purchase price.
3. The object of the supply must be accepted by the Buyer even in presence of defects, without prejudice to the Buyer's rights set forth at section VIII hereof.
4. The title of ownership of the object of the supply remains to MIKRON until full payment of the price of the supply. The Buyer is obliged to carry out all necessary formalities for such acknowledgment in accordance to the applicable local or national law.

## VII. Delivery term

1. Compliance with the delivery deadline presupposes that all of the commercial, administrative and technical aspects have been defined and agreed by and between the parties and that the Buyer has complied with the obligations he is bound to, among them the production of the required administrative and technical documentation, of the required commercial/administrative permits and the payment of whatever is owed or the issuance of a payment guarantee consistent with the contractual provisions.
2. The delivery deadline shall be deemed met at the time when MIKRON advises that the object of the supply is held available to the Buyer Free Carrier MIKRON registered office Agno (FCA INCOTERMS 2010).
3. MIKRON is only bound to respect the date of delivery if the Buyer has complied with all the commitments deriving from the contracts stipulated with MIKRON. The date of delivery will be extended when the Buyer doesn't perform its obligation irrespective if he is at fault. In the event of failure in payment, MIKRON reserves the right not to proceed to the delivery of the object of the supply under the contract until full payment of the amount due, or to terminate the contract and withhold the advance payments received from the buyer by way of compensation for the spare parts, service or part of it already rendered, without prejudice to the demand for compensation for any damages suffered.
4. The delivery deadline shall be adequately extended in the event of any force-majeure or fortuitous event and if anything occurs that is beyond the control and will of MIKRON, whether this occurs in the premises of MIKRON, the Buyer or third parties. Shall come under this heading events such as epidemics, mobilization, events of war, revolts, industrial unrest, natural events during operation, institutional provisions, bans on import, export, transit, interruption, delays and carrier fault, etc. The consequences and costs shall be divided in proportion to the damage incurred by each party. The beginning and end of force-majeure contingencies shall be communicated by MIKRON to the Buyer within the shortest time possible.
5. In the event of late delivery, the Buyer shall have no entitlement to compensation or cancellation of the contract. If MIKRON is responsible for late performance, the Buyer 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. Buyer shall forfeit his right if he has not lodged a claim in writing for such liquidated damages within three (3) months after the time when Delivery should have taken place.

6. Indemnities or liquidated damages are excluded in the event delays are attributable to third party suppliers prescribed or indicated by the Buyer.
7. If the delivery is delayed due to causes attributable to the Buyer, the latter must still perform the payments on the basis of the terms of delivery foreseen originally. In such an event, MIKRON will be authorized to store the scope of supply and may invoice a storage fee of 0.5% of the sales price per month. MIKRON is entitled to claim higher cost occurred, providing suitable document. In any event, late pick-up or unlawful refusal by the Buyer shall entitle MIKRON to terminate the contract, withhold any advance payments already received, demand the full payment of the balance of the supply price and consider itself free to sell the object of the supply to any third party.

#### VIII. Warranty, duration, complaints

1. The warranty period is twelve (12) months or 2500 working hours and shall run from the date of shipment by MIKRON.

The warranty period and the contract '*Warranty extension to 24 months*' do not include parts subject to normal wear and tear such as, but not limited to, cam followers, belts, clamping jaws as well as collets, etc.

Spindles warranty is twelve (12) months or 2500 working hours, beginning from the date of shipment of the machine supplied by MIKRON or from the date of purchase of a new spindle.

2. Buyer shall immediately notify in writing to MIKRON the defects detected or discovered, failing which the entitlement to the warranty shall lapse. MIKRON shall not be liable and the warranty action shall be, however, statute-barred after one year from the date of the transfer of risk even though the buyer has detected the defects later.
3. The warranty presumes that spare parts will be assembled by MIKRON or by MIKRON's authorized technical staff. Moreover MIKRON accepts no liability – and the warranty shall become void – in the event of mishandling by the Buyer or -party installation or start-up, failure to comply with the instructions for use and with safety rules, natural wear and tear, lack of regular maintenance and use of other than original MIKRON spare parts, inadequate operational means or materials, inadequate area or facility where the object of the contract is located, influence by chemical, electronic or electric agents. The warranty shall also not apply for any failures and defects not attributable to MIKRON or not traceable to defective or imperfect construction or make.
4. Barring any additional claims, until the end of the warranty period and if the claim turns out to be justified MIKRON undertakes to repair (or) replace, at its own discretion, the supply's components found to be defective or unusable because of demonstrable defects in materials, in construction or in performance. The Buyer must allow MIKRON the time needed to do all the work it deems appropriate and aimed at eliminating the defects, failing which MIKRON shall not be liable for the resulting consequences. The warranty is fulfilled with repair or replacement. Spare parts or components replaced or repaired don't entitle to an extension of the original warranty given with the supply.
5. The fitness for a particular purpose or the promise of a particular performance shall apply only if specified contractually. For purposes of identifying the quality and essential elements of the object of the supply, only what is included in the contract signed by the parties shall be valid and binding.
6. Unless otherwise agreed, for the groups overhauled by MIKRON at his venue or at the client, the warranty period is six (6) months from the completion date of the overhauling or at the latest, from the date of shipment by MIKRON.
7. For supplies and services from third parties, inclusive of any mandated by the Buyer, MIKRON shall be liable only within the limits, timeframes and consistent with the warranty terms of the third-party suppliers or subcontractors.

#### IX. Software

1. If the extent of the supply also includes the supply of software, the non-exclusive right to use the software supplied is conceded to the Buyer, including the relative documentation. This right is granted for exclusive use only for the object of the supply. It is forbidden to use it for more than one system. It is forbidden to grant sublicenses.
2. The Buyer may only reproduce, re-elaborate, translate the software or convert the object code to source code for uses permitted by the law. The Buyer must not remove the manufacturer's indications, in particular the copyright references, and must not modify them without explicit prior consent from MIKRON.
3. All other software and documentation rights, copies included, are the property of MIKRON or the software supplier.

#### IX. Final provisions

1. Unless otherwise agreed, all instances of contractual violation and the legal consequences arising from and all the Buyer's rights, regardless of the reason for which they are asserted, shall be definitively governed by this "Terms of Supply Spare parts". Barred are the rights of reparation, damage refund, of price reduction, of withdrawal from or termination of the contract that have not been expressly set forth in the aforesaid Terms. There is positively no right for the Buyer to claim direct and indirect or consequential damages such as but not

limited to loss of production, loss of use, loss of orders, loss of profits, loss of business, etc.

2. MIKRON shall not be subject to any contractual or extra-contractual liability unless caused by wilful intent or gross negligence. In no case, barring any additional claims, the liquidated damages that may be owed by MIKRON for any damage proved by the Buyer shall exceed an amount equal to 5% of the value of that part of the supply which was not in compliance with conditions and terms set forth in the contract. MIKRON shall not be liable in any way for actions by auxiliary personnel.
3. In the event of contract termination by Buyer's will or order cancellation for convenience, MIKRON shall be entitled to withhold the ad advance payments already received, to demand the residual price of the supply as indemnity for the work, supply and services done and to demand reparation for the damages incurred.
4. Defects, lack of quality or of relevant specifications shall not entitle Buyer to terminate the contract or cancel the order. Buyer shall grant MIKRON the necessary time and opportunity for reparation or substitution of the supply in compliance to section VIII above. Should such cure impossible in full or in part, the Buyer shall only be entitled to a suitable price reduction which cannot exceed the amount set forth in paragraph 2 of this section.

#### X. Applicable law and place of jurisdiction

1. The legal relationship between the Buyer and MIKRON shall be exclusively governed by and construed in accordance with the laws of Switzerland. The uniform UN law of Sales (CIGS – 11.04.1980) shall not be applicable.
2. Place of jurisdiction shall be exclusively the Court where MIKRON SA Agno has its registered office. However, MIKRON SA Agno is entitled to sue the Buyer at the competent Court place of Buyer's registered place of business.

**MIKRON SA AGNO**  
Via Ginnasio 17  
6982 Agno  
Switzerland