



## § 1 Validity of the General Terms and Conditions (GTC)

1. For the entire business transactions of Microtherm Sentronic GmbH and the purchaser, customer or principal, hereinafter referred to as **Principal**, these GTC shall apply in addition to the other contractual terms and conditions. We shall not accept other terms and conditions - even in the event of unreserved service provision or payment acceptance - unless we expressly consent to their validity, at least in text form.

These terms and conditions exclusively apply to commercial and entrepreneurial transactions with our Principals (with respect to Contractors within the meaning of § 14 BGB [German Civil Code]). These also include public-law legal entities and special public-law funds.

2. These GTC shall also apply in their personal scope defined above to all future transactions concluded within the context of this business relationship.

3. Individual agreements shall always take priority over these terms and conditions.

## § 2 Advisory and product details

1. We shall only advise the Principal at upon an explicit order and in return for payment for this advisory service.

2. Our product details are basic condition details and are only explicit assurances and/or guarantees, if this has also been explicitly agreed in an individual case, at least in text form

3. Our product details extend exclusively to the condition of our own products, but not to their suitability for use by the Principal or his further buyers.

## § 3 Conclusion of contract

1. We regard the order received by us from the Principal as an offer to conclude a contract. This applies to all of our deliveries, services and works.

2. If the Principal's order differs from our catalogues or other documentation, which have been sent in advance (requests to make an offer), the Principal shall identify the discrepancies separately.

3. Conditions that we have notified in advance of an order in the form of catalogues or other documentation or conditions that have been notified individually upon request, are requests to make an offer and are only binding offers, if they have been explicitly identified by us as offers.

4. As a rule, we will send the Principal an order confirmation subsequent to his offer, at least in text form, no later than upon receipt of which, the contract shall be concluded. If our order confirmation deviates from the order, we will make this identifiable. In this case, the contract will be concluded as soon as the Principal accepts this new offer, however, no later than with the approved acceptance of the delivery.

5. In the case of unauthorised withdrawal by the Principal from the contract, we shall charge minimum lump-sum damages of 10% of the net order value and reserve the right to assert higher damages. The Principal shall remain at liberty to prove lower damages.

## § 4 Contractual amendments

1. If the Principal requests changes to the delivery or service object after conclusion of the contract, a separate contractual agreement will be required for this.

2. The Principal undertakes to provide all of the required information for the fulfilment of his order.

a) If this fails to occur after conclusion of the contract, we will set an appropriate time limit for completion for the Principal on a case-by-case basis with a threat of withdrawal. After setting a deadline without success, we are entitled to withdraw from the contract and demand lump-sum damages of 10 % of the net total order. The proof of higher damages remains reserved. The Principal is at liberty to provide evidence of lower damages.

b) If the information required for execution of the contract is not provided in good time, the agreed delivery deadlines will be postponed for an appropriate period of time, whereby the Principal acknowledges with approval that, depending on our capacity utilisation, this appropriate postponement of the delivery deadlines will

not necessarily be linear with the Principal's delay in providing the required documentation, rather, it can be longer.

3. Technical changes made by us to the delivery or service object, which do not endanger the contractual objective and comprise performance, which is at least equivalent, remain reserved.

## § 5 Delivery period

1. As a general rule, delivery periods and time periods, which we refer to, are non-binding, are subject to the reservation that we are supplied on time by our suppliers and will only become binding, if they are explicitly identified as such by us or have been agreed to be binding. The Principal's right to set an appropriate grace period and exercise the statutory rights thereafter remains unaffected.

2. In the event of changes to the contract subject matter by mutual agreement, the delivery or performance periods and delivery or performance deadlines must also be newly agreed. If this is omitted, in accordance with judicially reviewable discretion (§ 315 Para. 3 BGB), we shall be entitled to stipulate appropriate, new delivery and/or performance deadlines. For the stipulation of these new contractual deadlines, the Principal's interest in a quick delivery, to the extent that we are aware of it, and our procurement and production capacities, shall be appropriately compensated.

This shall specifically also apply, if the contractual subject matter and/or the scope of delivery has been renegotiated after conclusion of the contract at the instigation of the Principal and therefore the order and/or production has been stopped, without a change having been made to the contract subject matter on the basis of these negotiations.

3. The delivery or performance period has been met, if - subject to agreements to the contrary - by the time it has elapsed, the delivery or service object has left our factory or we have notified completion for collection.

4. If our contractually compliant delivery or service is not accepted by the Principal at the time at which we are permitted to deliver, we are entitled to charge storage costs in the amount of 1.0 % for each initiated month, however, a maximum total of 5 % of the delivery or service price.

Both parties reserve the right to prove higher or lower storage costs.

In this case, we are authorised to stipulate a suitable storage site at the expense and risk of the Principal, as well as the insuring the delivery or service objects at the Principal's expense, unless these are already paid for.

5. We are already entitled to provide the agreed delivery or service prior to the agreed time, unless a more precise time period or time is fixed for the delivery.

6. If the agreed delivery or performance deadline is delayed due to reasons for which we are not responsible, we are authorised to provide partial deliveries according to production progress to an appropriate extent.

## § 6 Under/ - Over delivery

Due to the production process, the delivered quantities may deviate from the ordered quantities by up to +/- 10%. This is due to the numerous selections and tests during the production process that our products undergo, which result in rejections..

## § 7 Force majeure

In cases of force majeure, our delivery and performance deadlines will extend by the duration of the disruption that has occurred, even if they are fixed. These specifically include operational disruptions, strikes, lockouts, traffic disruptions, orders from higher authorities with us or our upstream suppliers, unless we are responsible for them, or we have failed to take reasonable precautions, although the event was foreseeable

This also applies if we were already in default when these circumstances occurred. We shall notify the Principal about the start and end of such hindrances without delay.

If the delivery or service is delayed by more than six weeks, the Principal and we are entitled to withdraw from the contract within the scope of the service affected by the performance disruption. In the case of withdrawal, we will refund advance payment received without delay.

## **§ 8 Prices, payment**

1. Unless agreed otherwise, the agreed prices shall be in euro EXW Pforzheim (Incoterms 2010) plus value-added tax, customs, freight, packaging and transport insurance costs.

2. Insurance of the goods to be sent will only occur by us upon request and at the Principal's expense.

3. Unless agreed otherwise, our invoices are payable within 14 days after receipt of goods.

4. If several open claims exist on our part with respect to the Principal and if payments by the Principal are not made on a specific claim, we are entitled to specify which of the open claims the payment has been made on.

5. In the event of payment default or partial payment, we are entitled to demand default interest in the amount of 9 percentage points p.a. above the respective base interest rate and retain further payments until all due invoices have been settled. In addition to this, we will charge a lump-sum default fee of € 40. The proof of higher damages remains reserved for us. The Principal is at liberty to provide evidence of lower damages.

6. In the event of justified doubts regarding solvency or creditworthiness of the Principal, we are entitled to demand cash in advance or an appropriate security deposit for the service to be provided by the Principal.

If the Principal is not prepared to pay cash in advance or provide the security, we are entitled to withdraw from these contracts after an appropriate grace period and demand damages due to non-performance, as a minimum, in the amount of 10 % of the net order value, and reserve the right to assert higher damages. The Principal shall remain at liberty to prove lower damages.

7. Granted payment targets shall lapse and outstanding claims shall fall due for payment at once, if the Principal has provided inaccurate details about his creditworthiness. The statutory rights remain reserved.

8. The Principal shall only have set-off rights with respect to our claims, if the Principal's counterclaim is undisputed, ready for a decision or legally established as final and absolute.

The assignment of claims against us to third parties requires our prior consent, which must be in text form, as a minimum. We undertake to grant this consent, if our legitimate interests are not impaired by this assignment

9. A right of retention only exists for the Principal, if the counterclaim is based on the same contractual relationship and is recognised, ready for a decision or legally established as final and absolute or if we violate our duties from the same contractual relationship significantly, in spite of a written warning and have not offered any appropriate security.

If our service is indisputably defective, the Principal shall only be entitled to retention to the extent that the retained amount is in reasonable proportion to the defects and the prospective costs for the elimination of defects.

10. The payment deadlines shall also remain in place, if delays occur to delivery without us being at fault.

11. We object to a cash discount agreement in the General Terms and Conditions of our Principal. We will only accept a cash discount, if it has been agreed individually.

## **§ 9 Place of performance, acceptance, transfer of risk, packaging**

1. The place of performance for the commissioned services is our factory in Pforzheim. Unless agreed otherwise, the Principal should collect the goods there after notice of completion.

2. The Principal undertakes to accept works commissioned by him, as soon as he has been notified by us about the completion of the commissioned services.

If the Principal does not accept the service within 2 weeks after notification, the acceptance shall be deemed to have occurred.

3. Unless a different agreement has been made, we shall stipulate the nature and scope of the packaging. Disposable packaging shall be disposed of by the Principal.

4. In the event of damage to or loss of the goods on the transport, an inventory should be arranged without delay and notified to us. Claims due to possible transport damage must be asserted with the freight forwarder without delay.

## **§ 10 Obligation to inspect and notify defects**

Our deliveries must be inspected without delay and in the event of an identifiable defect, immediately, however, no longer than within a time limit of 10 days. If the defect is not identifiable upon delivery, notice of the defect must be issued without delay after becoming known, however, no longer than within a time limit of 10 days. Every notice of defects must be issued in text form, as a minimum.

## **§ 11 Warranty**

1. If a defect exists regarding the delivery or performance objects, we are entitled to elimination of defects or substitute delivery at our own discretion.

2. After consultation with us, the repair can also be performed by the Principal.

3. Claims by the Principal due to the expenses required for the purpose of supplementary performance, particularly transport, travel, labour and material costs, are excluded to the extent the expenses increase, because the goods have been subsequently taken to a different location than the originally agreed delivery location.

## **§ 12 Legal defects, property rights**

1. Orders on the basis of drawings, sketches or other details provided to us will be executed at the risk of the Principal. If we intervene in third-party property rights as a consequence of fulfilling such orders, the Principal exempts us from claims of these rights holders. The Principal shall bear further damages. This shall not apply, if the violation of property rights was obviously identifiable for us at upon conclusion of the contract.

2. If third parties assert legal defects towards our Principal with respect to the items delivered by us, we shall be entitled to make the basic decision, at our discretion, on whether the violation will be recognised or put into dispute.

a) If the violation is recognised, we shall exempt the Principal at our discretion, by

- either procuring the required licences regarding the violated property rights

- or eliminating the legal defect of the delivery or performance object by providing a modified delivery or performance object, which is at least equivalent, to a reasonable extent for the Principal.

b) If the legal violation asserted by a third party is put into dispute by us, the Principal shall arrange the party status for us in the violation legal dispute with the third party, at our expense, and will conduct the violation legal dispute in accordance with our instructions and at our expense. The Principal will provide all of the required information, to the extent that it has originated in his area. The selection of the attorney of record also lies with us, as well as the decision on conducting the legal proceedings and their termination. In this case, we exempt the Principal from all legal prosecution costs, advances and refunds.

## **§ 13 Liability**

1. We are liable - also for our legal representatives and legal agents - without restriction, if we act with intent or gross negligence and without these restrictions, in the case of injury to life, limb and health.

2. In addition to the exceptions referred to in Clause 1, we shall only be liable in the case of simple negligence for us, our legal representatives and our legal agents, in the case of violating a significant contractual duty or an explicitly issued guarantee. In this case, the liability is limited to the typical contractual, foreseeable damages.

3. The liability provisions of the Product Liability Act remain unaffected.

#### **§ 14 Limitation of action**

1. The limitation period for claims and rights due to defects of our products, services and works, as well as damages arising from these, is 1 year. The beginning of the limitation period is based on the statutory provisions.

This shall not apply, if the law prescribes longer time periods in the cases of §§ 438 Para. 1 No. 2, 479 and 634 a Para. 1 No. 2 BGB.

2. The shortening of the limitation period in accordance with Clause 1 above does not apply, if we have fraudulently concealed the defect, for claims due injury to life, limb or health of a person, for claims under the Product Liability Act and for malicious or grossly negligent violation of duty by us, our legal representatives or our legal agents.

#### **§ 15 Acquisition of ownership, reservation of ownership, right of lien**

1. We reserve the ownership of all contractual items until the complete compensation of all claims to which we are entitled from the business relationship with the Principal.

We reserve all of the ownership rights and copyrights to the illustrations, drawings, calculations and other (technical) documentation provided to us.

2. If the property is processed or mixed together by us with third-party property, we shall acquire the ownership of the new item on the basis of § 947 BGB.

3. If the processing, combining or mixing occur in such a way that the third-party performance is regarded as a main item, we shall acquire ownership in the proportion of the value of our service to the third-party service at the time of the processing, combining or mixing.

4. If we acquire ownership of an item on the basis of our performance, we reserve the ownership of this item until compensation of all existing claims from the business relationship with the Principal.

5. The Principal undertakes to keep the reserved goods safe and, if necessary, perform maintenance and repair work activities at his expense and on time. The Principal shall insure the reserved goods at his own expense against loss and damage. Security claims created in the event of damages shall be assigned to us.

6. The Principal is entitled to sell on the object that is under our (co-)ownership during the ordinary course of business, as long as he fulfils his obligations from the business relationship with us. In this case the claim resulting from the sale shall be deemed to be assigned to us in the proportion of the value of the performance secured by the reservation of ownership for us to the total value of the sold goods. We already accept the assignment now. The Principal remains entitled to collect this claim, even after the assignment. Our authority to collect this claim ourselves remains unaffected.

7. The right of the Principal to dispose of the goods under our reservation of ownership, as well as to collect the claims assigned to us, shall lapse, as soon as he no longer fulfils his payment obligations and/or an application is filed for opening insolvency proceedings. In these aforementioned cases, as well as with other behaviour by the Principal in breach of contract, we are entitled to take back the goods that have been delivered under reservation of ownership without a warning.

8. The Principal shall inform us without delay, if dangers exist in respect of our reservation of ownership, particularly with insolvency, inability to pay and compulsory enforcement measures. At our request, the Principal shall provide all of the necessary information about the existence of the goods under our (co-)ownership and about the claims assigned to us, as well as informing his buyers about the assignment. The Principal shall support us with all measures, which are necessary for protecting our (co-)ownership and shall bear the resulting costs.

9. We are entitled to a right of lien in respect of all claims from the contract, to all items of the Principal, which have come into our possession on the basis of the contract. The right of lien can also be asserted due to claims from previous deliveries or services, provided that they are related to the delivery or service object.

The right of lien applies to other claims from the business relationship, insofar as this has been recognised or legally established as final and absolute. §§ 1204 ff BGB and § 50 Para. 1 of the German Insolvency Act apply accordingly.

10. If the realisable value of the security items exceeds our claims by more than 10 %, upon request by the Principal, we will release security items at our own discretion, until the limit has been exceeded.

#### **§ 16 Confidentiality**

1. The Principal undertakes to treat all aspects of the business relationship confidentially. He will specifically treat all non-public aspects commercial and technical details, which become known to him through the business relationship, as a trade secret.

- Information or aspects of the business relationship, which were already public knowledge at the time of disclosure do not fall under the duty of confidentiality.

- Furthermore, information that is actually of a sensitive nature shall not fall under confidentiality, if it must be disclosed for tax purposes or mandatory official purposes and/or it must be disclosed for the enforcement or defence of civil-law claims. In this case, the disclosure shall take place through the tax advisory or legal advisory professions, which are obligated to maintain confidentiality, to the extent necessary for achieving the taxation, official or civil-law aspect.

2. After the end of the business relationships, the Principal shall also be obligated to maintain confidentiality. All of the items provided by us shall be returned to us after rejection or processing of the order.

3. The Principal is only permitted to advertise with our business relationship with our prior consent, at least granted in text form.

4. Objects and documentation, which we provide to the supplier for offer preparation and/or contract execution, shall remain our property.

5. The Principal undertakes to secure confidential documentation and information against unauthorised gaining of knowledge using appropriate measures.

6. The Principal is specifically not entitled to dismantle goods produced by us or provided samples and/or prototypes into their constituent parts by way of so-called re-engineering, in order to find out their functionality, unless this functionality is public knowledge.

#### **§ 17 Valid law**

1. The legal jurisdiction for all contracts concluded between us and the Principal is exclusively our registered office, unless a legal exclusive jurisdiction exists for the dispute.

2. The place of performance is our registered office.

3. The law of the Federal Republic of Germany is exclusively applicable to the contractual relationships with us and our Principal. The applicability of the CISG - "Vienna Sales Convention" - is excluded.

4. If individual parts of these GTC are invalid, the validity of the remaining provisions shall not be affected by this. The Principal and we undertake to take up negotiations, with the aim of replacing the invalid clause with a different clause, which comes as close as possible to the economic purpose and legal sense of the original formulation.