

Terms and Conditions of Purchase

1. General Terms and Conditions

These Terms and Conditions of Purchase apply to all orders of products and/or services of whatever type placed by MICAFLUID AG (hereinafter called the "Buyer") with a Seller (hereinafter called the "Seller"). Other terms and conditions do not apply unless explicitly agreed to in writing by Buyer.

Acceptance and/or payment of deliveries of products and/or services do not constitute agreement with other terms and conditions.

Buyer does not owe payment for tenders (offers) submitted by Seller. Where tenders differ from Buyer's specifications, such differences must be explicitly noted.

2. Conclusion of Contract

Supply contracts (framework contracts, orders and order confirmations) and delivery schedules (backed up by a framework contract), including any changes and additions to these, must be issued in writing. Remote electronic data transmission may be used for delivery schedules. Seller must without delay confirm all orders in writing. If Seller does not confirm an order within 10 days of receiving it, Buyer has the right to cancel it. Where there is a framework contract, Buyer will specify the amounts and types to be supplied in separate release orders. These release orders are binding if Seller does not express objections to them within three calendar days and no other arrangements have been agreed to.

Clearly wrong orders or portions of orders may be corrected by Buyer any time in writing. Where applicable, Buyer may be liable for fidelity damages (lost profits).

The delivery items are ordered based on the offer of Seller or on the specifications of Buyer. Seller must verify whether the product designations on the order form are correct and whether the materials fit the purpose indicated. Seller must immediately notify Buyer if he has any concerns about the suitability of the ordered items.

Seller may not have the order filled by a third party without prior authorization from Buyer.

3. Pricing

The specified price, whether a total or unit price, is always final, unless otherwise agreed.

Value Added Tax, where applicable, must be indicated separately.

Specified prices are DDP Schlieren Works, unless otherwise agreed.

4. Delivery Terms

Specified delivery schedules and deadlines are binding and expected to be followed exactly by Seller. The criterion for compliance is the date the products and/or services are delivered to the address specified in the order. If there is a possibility that the deadline may not be met, Seller must immediately notify Buyer under specification of the expected delay. This does not detract in any way from the obligation to comply with the delivery schedule.

Buyer is not obliged to accept partial deliveries or deliveries before the date specified on the order.

A Seller who fails to meet the delivery deadline specified on the order is subject to a penalty of 2% of the total order value for each week of delay, including for each partial week, to a maximum of 10% of the total order value.

If, in spite of reasonable and appropriate precautions, Buyer is not able to accept the delivery of products and/or services due to circumstances outside his control, the delivery date must be delayed until the difficulty has been resolved. If this delay is longer than six months, Buyer has the right to cancel the supply contract. Seller waives all rights to damages in this case.

5. Delivery of Products and/or Services

The destination of the products and/or services is the address specified by Buyer, which is, unless otherwise indicated, Buyer's factory in Schlieren, Switzerland.

The delivery is DDP Schlieren Works (INCOTERMS 2010), unless otherwise agreed.

Every delivery must be accompanied by a packing slip. This packing slip must, besides the usual information, show the exact designations, amounts and item numbers of the delivered products as well as the Buyer's reference and order numbers.

If products are shipped by rail or truck, the above information must be indicated on all bills of lading and/or other forms included with the delivery as well as on all customs documentation.

Foreign Sellers making deliveries in Switzerland must include customs documentation with the standard delivery forms.

When delivering hazardous products, Seller is responsible for complying with all the applicable regulations until delivery of such products at their destination.

All products to be delivered must be conspicuously marked with the item number.

Different legal interpretations do not entitle Seller to interrupt the delivery of services.

6. Reception of Products and/or Services

Buyer will check the amounts and quality (generally by conducting random tests) of the delivered products within 10 working days following their reception. Buyer will notify Seller of any defects or missing items at the earliest opportunity.

7. Warranty

Seller must provide a 24-month guarantee following delivery that the items are of sound design, materials and workmanship; are fit for the purpose for which they are procured, and are free from defects in materials and workmanship. In the case of defects, Buyer has the right to demand, at his own discretion, a repair, conversion or price reduction, and if applicable, replacement free of charge of the defective materials with defect-free materials. In an emergency, Buyer may replace or repair defective parts at the expense of Seller, as well as repair any resulting damages, or have them repaired by a third party, at the expense of Seller. Defects are reported to Seller within 10 working days.

8. Billing

Invoices are submitted to Buyer in accordance with the terms specified on the order for the products and/or services.

Besides the usual information, every invoice must show the exact product designation, the delivered amount, the item number, the country of origin, the customs tariff number, as well as the Buyer's reference and order number.

Difficulties processing an invoice due to missing information will result in a suspension of the payment period (and discount deduction period).

9. Payment

Unless otherwise agreed, Buyer has 60 days, following reception of the invoice, to pay the amount due. Buyer may use the means of payment of his choice. Payment does not constitute confirmation that the products or services received fulfil the terms of the contract and/or are free of defects.

The assignment or inclusion in the invoice of claims on the part of Seller is hereby explicitly waived. This excludes assignments or inclusions previously agreed to in writing by Buyer.

10. Cancellation

Buyer has the right to cancel an order, without Seller being able to derive any claims from such an action, if a delivery is more than seven days overdue in spite of a warning. In this case, Buyer has the right to claim damages for non-performance. If Seller is prevented from delivering the products and/or services on time and in proper form due to circumstances beyond his control, Buyer may cancel a portion or all of the order within 10 working days following notification by Seller.

11. Intellectual Property and Confidentiality

Seller must ensure that the products delivered do not infringe any domestic and/or foreign intellectual property rights (patents, trademarks, copyrights, trade secrets, etc.) and that Buyer has complete freedom and permission to use and sell said products on domestic and foreign markets. Seller hereby indemnifies Buyer in respect of any loss or damage arising from any claim by a third party for infringement of domestic or foreign intellectual property rights in respect of products delivered by Seller, and shall repay any costs incurred by Buyer in respect of such claims.

Order documentation, drawings, models, samples, etc., supplied by Buyer to Seller for the performance of the obligations under the order, remain the property of Buyer and may be neither passed on to third parties without his prior permission nor used for Seller's own purposes. They must be protected against unauthorized access or use and returned in proper form, at the latest together with the delivery. Seller may neither make copies of these items nor keep them back.

Seller is bound to keep confidential any technical data and/or commercial and technical information to which he may become privy in the course of doing business with Buyer. Such knowledge may only be used for the purpose of performing the obligations under Buyer's order and made accessible only to those employees needed to perform said obligations. Any such employees must be bound to confidentiality.

12. Tools / Devices / Models

Any aids made available by Buyer to Seller must be treated with care and returned free of defects and without further mutual arrangements once the order has been filled. Use by third parties is prohibited.

Any aids that are provided must be stored and maintained as needed, and must be insured against damages by Seller at his own expense.

13. Materials provided by Buyer

Any materials made available by Buyer to Seller remain the property of Buyer. Seller waives the acquisition of ownership as per articles 725 – 729, Swiss Civil Code. Seller must store Buyer's materials on his premises separately from his own products in such a way that they can be easily identified as the property of Buyer. Seller must insure these materials against fire, water, theft and other risks at his own expense, and use them solely for the performance of the obligations under Buyer's order.

14. Retention of Title

If materials delivered by Seller are incorporated into products belonging to Buyer as a result of processing or manufacturing procedures, title to them passes to Buyer. Seller is bound in such a case to cancel any entry in respect of those products in the "Eigentumsvorbehaltsregister" (Swiss Reservation of Title Registry).

15. Penalties

Buyer may subtract applicable penalties (as specified in the purchase order) and/or offset any claims from the amount invoiced by Seller.

16. Severability

Invalidity or unenforceability of one or more provisions of these Terms and Conditions does not affect the validity of any other provision mentioned therein. The invalid or unenforceable provision is to be replaced by a valid one that is as close as possible in content to the invalid or unenforceable provision.

17. Consent to use of Information

Supplier consents to the storage and processing of information relating to his company.

18. Dispute Resolution

Any legal action arising from or related to the contractual relationship between Buyer and Seller will be settled by the regular courts. The parties hereby agree to the exclusive jurisdiction of the courts of Schlieren, Switzerland.

19. Governing Law

All disputes arising from or related to orders or other directives of Buyer are governed by Swiss law.

Schlieren, 1. January 2011