

General terms and conditions of microtap
GmbH (seller) for products and performances within
business connections with customers

I. Preface

1. All deliveries and performances of **microtap** apply to these conditions, unless otherwise agreed. Deviant conditions of purchaser are not subject matter of contract, even at acceptance of order by **microtap**. General terms and conditions of purchaser in this respect are valid only when **microtap** has formally agreed to these conditions in written form. For the lack of particular agreement a contract is accomplished with acceptance of order by **microtap** in written form.
2. **microtap** strictly reserves its non-restrictive rights concerning ownership, estimates in price, construction drawings, other data, and its patent rights. Such documents may be handed over to third parties only with the permission (in written form) of **microtap** and are to be returned to **microtap** immediately on demand, when a contract is not accomplished. Paragraphs (§§) I/1 and I/2 are valid for the documents of the purchaser. Such documents may be handed over to third parties to whom **microtap** has transferred the duties of delivery.
3. Purchaser has the non-exclusive right to use the delivered software with its performance features in combination with the equipment agreed to. Without written permission purchaser is solely allowed to generate a backup copy.
4. When reasonable for the purchaser partial delivery is tolerable.

II. Prices and conditions of payment

1. If not otherwise agreed the prices are understood ex works and do not include packaging, transport and goods and services (GTS) tax.
2. In case **microtap** has agreed to mounting or set up, purchaser bears after payment of all costs agreed upon the expenses for installation allowance plus shipping and extra costs.
3. Purchaser is entitled to withhold payments or to accumulate payments with counterclaims only when counterclaims are undisputed or legally secured.

III. Reservation of proprietary rights

1. Unto full payment, resulting from the business connection with purchaser, microtap GmbH reserves all proprietary rights at object of purchase including accessories and software (retained goods).
2. Purchaser is obligated to handle object of purchase with care. In particular, he is obligated to effect insurance at reinstatement value against breakage, fire, water, theft and other losses at his own expense.

3. At attachment of objects of purchase or other interference by third parties purchaser is obligated to inform microtap GmbH without delay in order that microtap can take action accordant to § 771 ZPO. If third party is not able to refund legal and other expenses accordant to § 771 ZPO, purchaser is liable for all defects.
4. Purchaser is authorized to sell object of purchase in the regular course of business; already now he assigns all claims up to the final amount of invoice including sales tax, which due to sale accrue from sub-purchaser or third parties, to microtap GmbH. Despite assignment of claim purchaser is authorized to collect payment him self. The authorization of microtap GmbH to collect payment herself will remain unaffected. microtap GmbH however is obligated not to collect payment herself as long as purchaser complies with payment obligations due to sale accrue without delay of payment, and, in particular, no insolvency proceedings are applied for. If this however is the case, microtap GmbH can demand of purchaser to disclose payment request and debtor to microtap GmbH, to disclose all information necessary for collection of payment, to hand over the appropriate documents and to inform the debtors (third parties) about the assignment of claim.
5. At non-contractual behaviour of purchaser, in particular delay of payment, microtap GmbH is entitled to withdraw object of purchase. The withdrawal of object of purchase is tantamount to cancellation of contract. After withdrawal of object of purchase microtap GmbH is entitled to its utilization, the proceeds of sale minus appropriate administrative expenses will be taken into account of purchaser.
6. microtap GmbH is obligated to unblock securities – to which she is entitled to – at purchaser's request insofar, as realizable valuation of securities do not exceed the requests which are to be secured for more than 10 %, whereas the assortment of the securities to be unblocked is up to microtap GmbH.
7. An insolvency proceeding of purchaser entitles microtap to withdraw from contract and to demand immediate return of delivered goods.

IV. Terms of delivery; delay

1. Terms of delivery are only binding, when purchaser has provided all documents required and has kept all the conditions of contract agreed upon. If purchaser does not comply with the requirements in time, terms of delivery may be altered accordingly. This does not apply when delay is due to **microtap**.
2. In case of failure to comply with terms due to force majeure (mobilisation, act of war, civil disturbance, act of terror, strike, lock out or comparable acts) terms are extended accordingly.
3. In case of delay in delivery due to **microtap**, purchaser who gives evidence of loss may demand a price reduction of 0.5 % of the product delayed for each complete week, not exceeding a maximum of 5% of the price in total. Further claims due to delay, even if legally permissible, are excluded. Purchaser's lawful withdrawal from contract is possible only, when delay is due to **microtap**. On demand

purchaser is liable to immediately declare whether he wants to keep up with contract despite delay or withdraw from contract.

4. When due to purchaser, after readiness of dispatch, shipping and delivery are postponed longer than one month, **microtap** may charge a warehouse rent of 0.5 % per month, not exceeding a maximum of 5% of the sales price in total. At default of acceptance for more than one month **microtap** is entitled to withdraw from contract and to claim for damage caused by delay.

V. Passing of risk

1. On delivery the risk passes over to purchaser
 - a. on delivery without set up or mounting when merchandise has been shipped to - or has been picked up by - carrier. On request and at the expense of purchaser **microtap** will insure the merchandise against the common risks of transportation
 - b. on delivery including set up or mounting in purchasers factory or, when agreed upon, after testing run.
2. In case delivery (...) is delayed due to purchaser the risk passes over to purchaser.

VI. Set up, mounting; acceptance

Unless otherwise agreed set up and mounting are subject to following regulations.

1. Purchaser is obligated to provide at his own expense:
 - a. Qualified personnel and assistants or staff members to be trained (trainees) and the required production equipment, e.g. tools, lubricants, work pieces.
 - b. Mounting equipment e.g. electric current (230 V/50 Hz) compressed air (4 – 6 bars/psi)
 - c. running water, proper illumination, heating
 - d. proper safety device; accident prevention regulations are to be considered.
2. Before set up/mounting all devices must be on hand so that set up/ mounting can take place at the time agreed upon.
3. In case of delay due to purchaser, additional costs (stand by time, extra travel) have to be met by him.
4. When after set up/mounting **microtap** asks for an acceptance certificate purchaser has to provide this within three days. Otherwise, or when product is put into operation, acceptance is automatically agreed on.

VII. Acceptance

Due to minor lacks purchaser is not entitled to refuse acceptance.
Part deliveries are tolerable.

VIII. Defects of quality

For defects of quality **microtap** is liable as follows:

1. Provided that it's cause was already existent at the time of passing of risk, all parts or attainments which show defects of quality within the period of limitation are to be replaced or mended and delivered free of charge. (...)
2. Warranty claims are limited to a period of twelve months. This is invalid when law imperatively sets forth a longer period, and in case of damage to life, body or physical health when **microtap** has caused damage deliberately or through gross negligence, moreover invalid at fraudulent concealment of a defect. Legal regulations on suspension or restart of the period of limitation remain unaffected.
3. Purchaser is obliged to give written notice to **microtap** of material defects without delay.
4. Purchaser's payments may be withheld only when warrantable claims have been asserted. The amount of deduction must be in adequate proportion to claim. If claims are effected wrongly, **microtap** is entitled to reclaim expenditures.
5. Initially **microtap** must be given the opportunity to improve efficiency within adequate time.
6. In case rectification fails after a second try, the purchaser – regardless of other claim for replacement according to § XI. is entitled to withdraw from contract or to reduce payment.
7. Warranty claims fail with minor variations of composition agreed upon, with minor disturbance of usability, natural abrasion or with damages after passing of risk due to faulty set up and faulty usage, non-compliance with user's manual, faulty production equipment or faulty environmental influences as well as irreproducible software mistakes. Also alterations, modifications or improper repair work through purchaser or third parties cause warranty exclusion.
8. When subject matter after delivery has been moved to another place, purchaser's claims for necessary expenditure due to the reason of supplementary performance, particularly with regard to costs of transport, labour, and material, are excluded unless otherwise agreed upon.
9. Claims for damages are covered in § XI (further claims for damages). Purchaser's claims in excess thereof against **microtap** and auxiliary personnel due to defect of quality as ruled in § 8 are excluded.

IX. Industrial property right and copyright, defect of title

1. If not otherwise agreed upon **microtap** is obliged to keep its products and performances free from industrial property rights (copyrights) only in the country to which the products/performances have been delivered. In case a third party righteously claims damage due to a violation of these rights, **microtap** is liable to the purchaser for the period of time as ruled in § VIII./2 as follows:
 - a. **microtap** will effect at it's own choice and costs a right of use and enjoyment for the products and performances delivered or will alter the products accordingly, that no industrial property rights are violated any more. If under adequate conditions such is not possible, purchaser is entitled to withdraw from contract or to reduce the purchasing price.

- b. **microtap's** obligation to pay for damages is ruled in § XI.
 - c. The liabilities of **microtap** mentioned above apply only, when purchaser informs **microtap** immediately of a third party's claims in written form and has not acknowledged a violation of rights and leaves all kind of prevention and settlement to **microtap** as a subject of reserved rights. In case purchaser stops working with the delivered product in order to minimize damage or out of an other important reason he is obliged to point out to third party that with the cease of production no violation of rights is admitted
2. Claims of purchaser are excluded when he himself is responsible for violation of rights.
 3. Furthermore, claims are excluded when violations of rights are caused by certain specifications of purchaser, by application of product in unpredictable way or when purchaser has altered product or when product runs in combination with other products, which were not delivered by **microtap**.
 4. In case of violation of rights regarding purchaser's claims as ruled in § IX/ 1/a regulations apply to § VIII/4, 5 and 9.
 5. In case of other defects of title regulations apply to § VIII.
 6. Due to defect of title further claims of purchaser or claims regulated differently as mentioned in § IX vs. **microtap** and its auxiliaries are excluded.

X. Unenforceability of performance, adaptation of contract

1. In case of impossibility of performance before passing of risk purchaser is entitled to withdraw from contract. Legitimate interest provided, purchaser is also entitled to withdraw when parts of purchase/delivery are impossible to be performed. If legitimate interest does not apply purchaser is obligated to pay contract price for part-delivery. This also applies in case of disability. If impossibility or disability occurs in default of acceptance, for which purchaser is solely or predominantly responsible, he still is legally obligated to pay.
2. As far as delivery is impossible purchaser is entitled to demand on compensation for damages unless **microtap** is not responsible for impossibility of performance. Purchaser's claim for damages however is limited to 10 % of total value of those parts of delivery, which could not be put in operation. This does not apply unless liability is compulsory in cases of deliberateness, gross negligence or in cases of damage to life, body, or physical health. Purchaser's right to withdraw from contract remains unaffected.
3. Provided that unpredictable events in terms of § IV/2 substantially change the commercial relevance or the matter of delivery, or show considerable influence on the enterprise of **microtap**, the contract is to be adapted under consideration of bona fide. Unless economically justifiable **microtap** reserves the right to withdraw from contract. In such a case **microtap** (...) has to inform the purchaser immediately and without delay, even if a prolongation of delivery has been agreed upon.

XI. Other claims for damages

1. Claims for damages and reimbursement of expenses of purchaser (...) for what legal reasons ever, in particular due to neglect of duty of contractual obligation and unlawful act, are excluded when they exceed the claims ruled in §§ IV, VIII, IX and X.
2. This does not apply when there are liabilities due to clear indispensable legal instructions. In cases of violation of essential contractual obligations liability is limited to direct losses foreseeable and typical for this type of contract, except in cases of deliberateness, gross negligence or in cases of damage to life, body or physical health. Such claims apply to period of limitation for reimbursement of expenses as ruled in § VIII/2, otherwise they apply to the indispensable legal instructions. Amendment of the burden of proof to the disadvantage of purchaser is not subject of this regulation.

XII. Use of software

1. With the computer software purchaser acquires the non-exclusive right to use the delivered software with its documentation. The software is to be used with the delivered product. The software may not be used with another system.
2. Purchaser may use software only on a limited legitimate scale (...). Duplicating, revision, translation, and conversion from object code to source code and vice versa are permitted only with **microtap's** prior authorisation in written form. Purchaser is indebted not to remove or to alter manufacturer's data – particularly copyright notation (...)
3. All other rights (copies incl.) are reserved to **microtap** respectively its software supplier. Awarding of sublicenses is not allowed.

XIII. Place of delivery, place of jurisdiction and applicable law

1. Place of delivery is head office of **microtap**.
2. When purchaser is a salesman, a corporate body or a person/corporation governed by public law, place of delivery is place of jurisdiction for all kinds of disputes. Moreover **microtap** reserves the right to sue at place of execution (head office of purchaser).
3. The privacy of contract applies to German law and to the exclusion of the uniform law for the international purchase of chattels as well as the law for the conclusion of international sales contract, even when purchaser's head office is abroad.

XIV. Liability of contract

Even if individual parts of the contract are legally ineffective, the other parts remain in effect. This does not apply when adherence to contract would cause undue hardship.
