

## **General Terms and Conditions of microTEC Gesellschaft für Mikrotechnologie mbH**

### **I General**

1. The following terms apply to all tenders by and all contracts with microTEC, counselling included. Deviations from these terms, verbal subsidiary contracts and promises require the written confirmation of microTEC to guarantee their validity.
2. Terms and conditions of the contract partner have no validity, even if they have not been expressly contradicted.

### **II Tender and Conclusion of Contract**

1. The commitment period of microTEC tenders is based solely on the content of the tender. If there is no commitment period in the tender, the tender is considered to be without engagement.
2. A contract is concluded through an order being placed by the contract partner or on confirmation of the contract by microTEC on the basis of the tender submitted by microTEC. If the contract partner desires a service differing from the contract, this requires the written confirmation of microTEC. Moreover, the tender fully describes, according to requirements of the specific case, the individual tasks with regard to the precise purpose, content and scope of the work, the time-period required and the deliberation, test, development and/or production target.

### **III Prices, payments, due dates and delays**

1. Prices are usually specially calculated for each individual case. A basic allowance is generally assumed and a cost fraction which depends on the type of work done and the number of pieces. Costs of project research, development, design, programming, template costs and possible additional necessary equipment come under the basic allowance. The costs per piece basically depend on the type of material, the desired geometry, the tolerances demanded and the desired quality assurance measures. The calculation is based on an accurately known design and on the material requirements. If, after conclusion of the contract, it should transpire that these conditions have changed or that a mistaken calculation has occurred, which was not the fault of microTEC, microTEC is no longer bound to the given pricing. Pricing for development tasks for design production is calculated on a separate basis.
2. Prices are quoted ex microTEC works, unless otherwise agreed, plus the VAT currently applicable at the time of delivery. Bank charges, especially in the case of foreign payments, must be borne by the contract partner and increase the amount due for payment in each case.
3. The payment, advance payments included, must be made to one of microTEC's accounts, without deduction within 14 days of the invoice date. The criterion for payment is the date of the payment being credited to the account.
4. If the service to be provided by microTEC extends beyond a period of sixty days, microTEC is entitled to monthly part payments, amounting to 90% of the cost of the part services provided. In the case of acceptable partial services, qualifying for acceptance, microTEC can charge for the total accepted part service.
5. If payment deadlines are not observed, interest becomes due at the rate of 8% above the current BGB (German Civil Code) basic rate. Proof of higher damages remains reserved.
6. Rights to withhold payment or offset payment are excluded, unless the counter-claims are uncontested or are legally enforceable.

7. In the case of delays in payment or deterioration in the creditworthiness of the contract partner, microTEC is entitled to immediately fix a due date for debts due, irrespective of agreed payment deadlines, and to fulfil outstanding deliveries or services only on advance payment.

#### **IV Retention of ownership**

1. Goods supplied, services and results remain the property of microTEC until all debts are met, arising from the entire business relationship with the contract partner, especially any outstanding balance arising from the current business relationship.
2. As manufacturers of the reserved goods, microTEC may convert or redesign them in accordance with § 950 BGB. The converted goods are considered to be reserved goods. In converting to, and combining and mixing the reserved goods with other goods by the contract partner, microTEC is entitled to joint ownership of the new articles, in the proportion that the contract partner owns the new products in relation to the share of his suppliers.  
Should microTEC's ownership expire as a result of combining or mixing, the contract partner cedes to microTEC, which hereby accepts it, the rights of ownership, already due to it on conclusion of the contract, to the new equipment or goods to the extent of the invoice value of the reserved goods and stores them without charge for microTEC.
3. The contract partner may only sell the reserved goods on through the normal business channels, according to his normal terms and conditions and provided he is not in default, with the provision that he makes a "retention of ownership" contract with his buyer. The contract partner cedes the debts from the on-selling to microTEC, which thereby accepts them, and he must retain all secured debts specifically for microTEC, without charge. The use of the reserved goods to fulfil work and work supply contracts is also regarded as on-selling. He is not entitled to make other use of the reserved goods.
4. The contract partner is obliged to handle the reserved goods in an expert, responsible way. The reserved goods must be specially stored and labelled as the property of microTEC. The contract partner has to protect the reserved goods from access by third parties, and especially to inform microTEC immediately if they are accessed and to take all measures to secure microTEC's property.
5. Templates and other equipment produced by microTEC remain the property of microTEC and the partner must keep them for microTEC for two years, without charge.

#### **V Acceptance**

As far as acceptance by the contract partner is required, it must occur immediately after he has been informed of his ability to accept. If acceptance does not occur within one month of his being informed, or if acceptable impediments to acceptance are named by the contract partner, the service is considered to have been withdrawn.

#### **VI microTEC's liability for infringement of the industrial property rights of third parties**

1. In order not to infringe the industrial property rights of third parties, the contract partner must, at his own expense, commission microTEC to carry out a patent search. If the contract partner refuses to do a contract search or does not commission one, microTEC is not liable for infringement of the industrial property rights of third parties.
2. All liability on the part of microTEC for infringement of the industrial property rights of third parties is excluded, if infringement of the industrial property rights of third parties only occurs when the goods are modified. microTEC is not obliged to warn the contract partner of the possibility of infringing industrial property rights by modification. If a third party asserts claims against the contract partner for infringement of industrial property rights or copyrights (referred to below as industrial property rights) by the products supplied by microTEC or by other services and the use of the product is thereby impaired or banned, at its own discretion and expense, microTEC will

either modify or alter the products, so that they do not infringe industrial property rights or exempt the contract partner from licence fees for the use of the products vis-à-vis third parties. If this cannot be suitably accomplished, microTEC is entitled to take back the product against refund of the payment made. The contract partner must pay suitable compensation for the use of the product.

3. If a microTEC product is used by the contract partner in a way not foreseen by microTEC, which causes the product to be damaged or the industrial property rights of third parties to be infringed, any liability of microTEC is excluded. The same applies as far as the infringement of industrial property rights is due to special requirements of the contract partner, or as far as the product is modified by the contract partner or used with products not supplied by microTEC.
4. The condition of microTEC's liability in accordance with Clause VI.2 is that the contract partner should immediately inform microTEC in writing of the claims of third parties regarding an infringement of industrial property rights, that he should not admit the alleged infringement nor take part in any dispute comprising possible out-of-court settlements without the agreement of microTEC. If the contract partner ceases to use the product, in order to reduce damage, or for other reasons, he is obliged to point out to the third parties that the cessation of use in no way implies admission of the infringement of industrial property rights.
5. Further claims of the contract partner regarding an infringement of industrial property rights of third parties are excluded. The contract partner's right to withdraw from the contract, however, remains unaffected for as long as he is debarred from using the product because of the opposing industrial property rights of third parties.

## **VII Warranty**

1. In the case of all work, microTEC guarantees that it will use scientific care and will observe the generally accepted regulations and acknowledge the latest state of technology. It does not, however, guarantee that a research or development target will actually be achieved. Any further liability is excluded, especially for materials, modification of the materials through work, features of the parts or other properties of the product, which has been correctly manufactured according to the agreed specifications. Should a product show defects in the form of deviations from the agreed specifications, the claims of the contract partner are restricted to claims for rectification. If the repair fails, the contract partner may demand a new item. If the new item fails, both partners may withdraw from the contract. The contract partner also has the option of demanding a reduction in the agreed payment.
2. After the delivery has arrived, the contract partner must inspect the delivery with the thoroughness of an efficient businessman and immediately report obvious defects, the same applying to hidden defects, after they have been discovered. After the process of acceptance by the contract partner, complaints about defects which could be detected at the time of acceptance are excluded.
3. Further claims regarding defects, in particular claims for compensation for damage which has not occurred to the goods themselves, are excluded; this does not apply in the case of the lack of warranted properties, if the aim of the warranty is to protect the contract partner from the damage which has occurred.
4. microTEC's warranty is limited to six months in the case of dealers and to twenty-four months in the case of consumers, dating from delivery of the product or of the research or development results. This also applies to accepted guarantees, as far as they do not have shorter expiry periods

## **VIII Limited Warranty**

The amounts redeemable in damage claims of any type are restricted to the delivery value. microTEC's liability is based exclusively on these terms and conditions and on the agreements reached. All rights not specifically established, e.g. to withdrawal, cancellation, reduction and any form of damage compensation, irrespective of the cause in law, also especially for inability, illegal activities, positive contract violation and fault at the end of the contract are excluded. This does not apply in the case of

- deliberate intent
- gross negligence by legal representatives or executives
- culpable infringement of basic contractual rights, as far as the realisation of the aim of the contract is hereby jeopardised; in this case, however, liability is restricted to compensation for damage which is predictable and contract-typical.
- claims according to the Product Liability Law

## **IX Special regulations for research and development services**

1. Execution and handling of research and development services
  - a) After having previously agreed to do so, the contract partner and microTEC will, on a reciprocal basis, punctually supply the information required for execution of the research and development tasks and make available, or hand over for the duration of the tasks, any necessary documents, items and helpful materials in the condition suited to the intended purpose
  - b) The items and documents handed over to microTEC are supplied free of charge. At the end of the contract, these must be returned to the contract partner, unless an alternative arrangement has been reached.
  - c) Research and development results are provided to the contract partner at microTEC's place of business, unless other arrangements have been agreed.
2. Publications and advertising
  - a) The contract partner is entitled to publish the results of the project, if this forms part of the agreement. He will agree on publications with microTEC before they appear.
  - b) microTEC is entitled to publish fundamental scientific and technical statements, which do not affect the interests of the contract partner.
  - c) The contract partner will use results for advertising purposes named specifically by microTEC, only with the latter's agreement.
  - d) microTEC may include the contract partner in its list of references.
3. Rights to research and development results
  - a) The research and development results are provided to the contract partner after they have been completed in accordance with the tasks description.
  - b) Unless otherwise agreed, microTEC retains the intellectual property component of the research and development results and in particular the right of use outside of the actual contractual relationship and all industrial property rights or copyrights which come into question.
  - c) With the written agreement of microTEC, the contract partner may be given a non-exclusive basic right of use to the inventions produced from the execution of the project. In this case, the contract

partner repays microTEC, in addition to the licence fee which has to be agreed, a reasonable share of the costs for registration, maintaining and defending the industrial property rights and, where necessary, makes employed inventor payments, which are lawfully due.

- d) No exclusive rights to a subject for collaboration can be derived from any collaboration with microTEC. microTEC reserves the right to work on other projects on the same subject, observing confidentiality agreements.

#### **X Nondisclosure**

microTEC and the contract partner will not allow third parties to access mutually provided information of a technical or commercial nature, which is to be categorised as confidential, for the duration and after the end of the contractual relationship. This does not apply to information which is generally accessible or to which microTEC or the contract partner have, in writing, waived the obligation to confidential treatment. If a special confidentiality agreement should be necessary in individual cases, this can be mutually concluded in accordance with microTEC's draft arrangement.

#### **XI Purchasing**

With the exception of VII, these terms and conditions also apply to all orders by microTEC from the contract partner. Opposing conditions of the contract partner are hereby rejected.

#### **XII Terms**

In addition, Incoterms 2000 are considered to have been agreed between the contract partner and microTEC.

#### **XIII Other arrangements**

1. The delivery place for all services is microTEC headquarters.
2. The Law of the Federal Republic of Germany applies to all privities of contract between microTEC and the contract partner.
3. Duisburg is the place of jurisdiction for all legal disputes, including legal action involving dishonoured cheques and unpaid debts.
4. In the case of individual contract clauses being ineffective, the others remain effective. The contract partner and microTEC are obliged to agree on an effective clause to replace the ineffective one, which will achieve the purpose of the ineffective clause to the greatest degree possible.