

Delivery-, Repair- and Processing Conditions of Miksch GmbH

I. General policy

Delivery, repair and working conditions of Miksch GmbH hereby named general terms and conditions (GTC) apply in conjunction with legal transactions with:

1. Natural or legal entities, which enter into a contract agreement in the scope of their commercial or independent occupational activities (company);
2. Public sector legal entities or a public sector trust.

II. Non-disclosure agreement

Miksch GmbH maintains the rights to samples, estimated prices and costs, designs, drawings and sketches, calculations and the like, tangible and intangible information including electronic property and intellectual property rights; these are not to be accessible to third parties. Permission for the further distribution of information to third parties requires the explicit consent from Miksch GmbH in written form. This also applies to written documents marked „confidential“. Infringement of these terms will result in a contract infringement penalty for the purchaser to be paid to Miksch GmbH in the sum of 30 % of the complete contract volume, with a minimum amount of EUR 20,000.00 (twenty thousand EUR). Each case of the above mentioned information or documents being used without consent is accounted for as a new infringement case. Miksch GmbH maintains the right to make further claims or demand further compensation.

III. Terms of acceptance

The purchase order of a purchaser constitutes a binding offer, which Miksch GmbH may accept through either sending a delivery confirmation or by sending the goods, within a two week period.

IV. Rejection of other terms and conditions clause

1. Terms and conditions of the purchaser, which are not consistent with the GTC of Miksch GmbH are not applicable as terms of the contract upon acceptance of the order.
2. The GTC of Miksch GmbH also apply should Miksch GmbH have knowledge of regulations to the contrary or should the purchaser implicitly communicate that they have inconsistent terms with regards to delivery, repair or working measures.

V. Prohibition of offsetting (netting)

Offsetting against the payment claims of Miksch shall be excluded unless the claim of the ordering party is undisputed or legally binding.

VI. Transfer of risk and possession

1. Risk is transferred to the purchaser once deliverables leave the factory. This is also the case when partial shipments take place or when Miksch GmbH has taken responsibility for other services, for instance shipping and delivery costs.
2. Upon receiving goods, the purchaser must give notice in a prompt fashion to Miksch GmbH of any obvious damages. Hidden defects are to be reported by the purchaser to Miksch GmbH promptly, subsequent to their discovery.

3. In as far as acceptance is explicitly agreed upon, the following standard is applicable with regard to the passing of risk. Acceptance is to be performed without delay at the scheduled delivery date or upon notification from Miksch GmbH that goods and services are ready for acceptance. Should an immaterial flaw occur, the purchaser is to accept the goods provided. Acceptance applies both in the case of goods intended the ordering company as well as those intended for resale.
4. Should the delivery be delayed or cease due to reasons which are beyond the control of Miksch GmbH, risk switches over to the purchaser the date notice is given that goods and services are ready for acceptance and/or fulfilment of work is completed. In this case, acceptance after notification by Miksch GmbH is considered complete after two weeks. Miksch GmbH is obliged, to offer insurance should the purchaser require, at the cost of the purchaser.
5. Partial shipments are permitted, so long as considered reasonable by the purchaser.

VII. Warranty and defects

1. Our products are not to be used or placed in air, motor, rail, water or other types of vehicles. All warranties on our goods and products are void should they be used as mentioned above.
2. The statute of limitations for claims for defects is one year. This time limit begins at the point of risk transfer. Time limitations as well as other regulations apply for delivery of products as well as repairs and consultation processing orders.
3. Miksch GmbH has the choice of subsequent performance by either product repair or sending a replacement. To the extent that subsequent performance after several attempts is unsuccessful, performance is impossible or can not be performed due to reasons beyond the control of Miksch GmbH or performance has not occurred or failed within the legal timeframe of the purchaser's grace period, the purchaser can choose to withdraw from the contract due to defective delivery or is able to reduce the purchase price. With regards to reasonable grace period terms, please see section X "Performance Date / Grace periods" of this document.
4. The purchaser is permitted only subsequent to Miksch GmbH's written agreement, that modifications/improvements be made by either Miksch GmbH or third parties. The purchaser may apply their own measures in order to prevent bodily injury or to prevent the company going out of business.
5. Miksch GmbH is not liable for damages to goods, which occur due to wear and tear, improper, faulty or non contractual use, faulty operation and set up, excessive strain, improper changes or alterations as well as repair work, or through false or neglectful treatment which arise through the purchaser or a third party, to the extent that such damages are not inflicted by Miksch GmbH.
6. With regards to warranty of title the following applies :
Should the use of the delivered items lead to an infringement of commercial property rights or domestic copyright, Miksch GmbH will generally provide the right for further use for the purchaser, at Miksch GmbH's cost or Miksch GmbH will modify the delivered item for the purchaser in a reasonable fashion so that copyright infringement no longer exists. Should this be economically infeasible or alterations are unable to be performed within a reasonable time, the purchaser has the right to withdraw from the contract. Under the mentioned conditions, Miksch GmbH has the right to withdraw from the contract as well.

VIII. Liability

Compensation by the purchaser, regardless the legal reasons, are excluded with the following exceptions as mentioned below:

- Miksch GmbH kept silent about legal or product defects or entered into a guarantee regarding the quality of the goods;
- Damaged was premeditated or an act of gross negligence on the part of Miksch GmbH, its legal representative or agents or a negligent breach of material contract obligations ("cardinal obligations") caused through these persons; or

- culpable injury on the part of Miksch GmbH, its legal representatives or agents which lead to bodily harm, health injury or injury to life.

In the case of negligence which breach cardinal rights Miksch GmbH liability is limited to the amount of typical contracts to the extent that the amounts are predictable.

IX. Retention of title

1. Miksch GmbH maintains ownership of delivered goods until all remaining receivables which Miksch GmbH is entitled to by the purchaser in the scope of the business relationship, have been paid. With regards to repair contracts Miksch GmbH maintains the ownership of all supplies, replacement and parts employed until all payments have been made in full. These items fall under the term delivered goods.
2. Miksch GmbH has the right, to insure the delivered goods against theft, breakage, fire and water damage at the cost of the purchaser to the extent that the purchaser has not already insured these items.
3. The purchaser may not mortgage or transfer the delivered goods as security. By garnishment or confiscation or other funds committed through third parties, Miksch GmbH is to be informed without delay and Miksch GmbH is to be provided with the necessary documents and information in order to intervene.
4. Should the delivered goods be bundled with other goods, Miksch GmbH is entitled to the proportional title. Should the purchaser acquire sole title for the new property, as agreed the purchaser transfers proportional ownership to Miksch GmbH and Miksch GmbH will accept this transfer. The purchaser physically holds the sole or joint ownership for Miksch GmbH.
5. The purchaser has the right to sell the delivered goods in the framework of proper business transactions to other parties. The receivables which occur from the sale of these goods to third parties, are then assigned to Miksch GmbH. The purchaser has the right to collect receivables as long as payment obligations to Miksch GmbH are fulfilled. Should the purchaser delay payments, Miksch GmbH has the right to revoke collection authorization from the purchaser. In this case the purchaser is obligated upon demand from Miksch GmbH, to provide all relevant data regarding collection and if applicable provide all necessary documentation to be inspected by an inspection agent, as well informing the debtor of the transfer.
6. In the case of late payment on behalf of the purchaser, the claim of the issuance of bankruptcy and insolvency proceedings, a transfer of remaining rights to third parties or the transition of the purchaser's business operations to third parties, Miksch GmbH has the right to cancel the contract and to demand the delivered goods and is able to enter the property of the purchaser with this aim. In this case the retention of title applies, a retraction as well as a garnishment of the delivered good from Miksch GmbH does not mean a cancellation of the contract, unless Miksch GmbH specifically stipulates this. Subsequent to removal of the reserved goods Miksch GmbH is entitled to their disposal/utilization. Revenues generated from disposal is to be netted against the purchaser's liability less the costs associated with the disposal.
7. If the realisable value of the security exceeds Miksch GmbH claims against the purchaser by more than 10%. Miksch GmbH upon request from the purchaser can decide to release/approve of the security amounts.

X. Performance date / Grace periods

1. Should a fixed delivery date not be agreed upon, the delivery is to occur two weeks subsequent to entering the contract. To the extent that an obligation to co-operate by the purchaser is necessary, the scheduled date does not begin until the purchaser has fulfilled this obligation.
2. Information with regards to repairs, or processing time are based upon estimates and are therefore not binding. The agreement of a binding repair and processing deadline, which must be designated as binding, can be requested by the purchaser once the extent of the required work is determinable. A binding repair or process scheduled date is competed, if the ordered goods have been accepted by the purchaser, or are ready for acceptance in the case of a contract which specifically allows testing of the products.

3. In the case of subsequent and extending orders or should necessary further work be required, a later completion date is to be agreed upon.
4. In the case of subsequent improvements or other delays the purchaser is to grant Miksch GmbH an appropriate grace period. In some cases this may be up to 10 weeks, should Miksch GmbH rely on the delivery of parts from third parties and it is not possible to obtain these more quickly.

XI. Calculation of compensation claims

1. Should the purchaser neglect to fulfil its duties Miksch GmbH can request 10 % of the purchase order amount as compensation. Miksch GmbH is permitted to prove further damages and accordingly have these amounts be applicable. The purchaser is obliged to prove that damages are less or do not exist.
2. Should the purchaser cancel a confirmed request, Miksch GmbH is entitled to charge 10 % of the purchase price for the processing of the request and demand the income loss. Higher damages may be applicable should they be provable.

XII. Method of payment/ pricing and payment conditions

1. The price offered is binding. In addition to the price, sales tax in the applicable legal amounts is also to be charged.
2. The price is upon other explicit agreement between the two parties a pick up price at the Göppingen factory, excluding packaging, transportation and delivery.
3. For repairs and processing Miksch GmbH will provide the purchaser upon entry into the contract an estimated price, to the extent that this is possible. In the case that the order is not able to be performed for this price or if Miksch GmbH deems there be additional work required during the fulfilment of the order, Miksch GmbH will ask the purchaser for consent should the price be greater than 20 % of the previously estimated price.

XIII. Purchaser involvement and technical assistance

1. For repairs and processes outside of Miksch GmbH factories, the purchaser is required to provide input and technical support. Should the purchaser not fulfil these requirements, after Miksch GmbH has set deadlines for cooperation, Miksch GmbH has the right but is not obliged, to carry out procedures on location with additional costs to be covered by the purchaser. In particular, the purchaser is to provide the adequate staff for repairs in appropriate numbers at the appropriate time. Miksch GmbH takes no liability, with regard to the staff provided. The purchaser likewise, will provide the necessary devices, heavy equipment, articles and materials as well as power, water etc. including needed connections.
2. Die The technical assistance of the purchaser must guarantee, that repair or adaptation is to begin without delay, once Miksch GmbH personnel have been informed, until purchase acceptance can be performed.
3. Other legal claims and rights from Miksch GmbH remain in affect.

XIV. Place of performance, applicable law, jurisdiction

1. Legal privity of contract between Miksch GmbH and the purchaser applies exclusively for domestic parties under German federal law. UN purchase law does not apply.
2. The jurisdiction applicable is the court of law assigned to the jurisdiction in which Miksch GmbH head office is located. Miksch GmbH has the right to sue on the headquarters location of the purchaser.
3. Should individual terms of the terms and conditions policies be invalid, the validity of other terms still remain in effect. In the case that a portion of a clause be invalid, the remaining other portions of the clause still remain in effect, if the contents of the portion of the clause is separable, and is understandable and reasonable within the scope of the contract.