

Purchase Conditions of Miksch GmbH

I. General policy

Miksch GmbH purchases are made solely on the basis of the purchase conditions as described below. The enforcement of possible conditions used by suppliers is ruled out unless such conditions are explicitly agreed in written form and the delivery of goods is accepted. Discrepancies and amendments on behalf of suppliers are effective only with our explicit written confirmation. This only applies for business transactions for which the agreement is made.

II. Contract completion

1. Only written completed supply contracts (including order and acceptance) with a delivery schedule are binding. Oral agreements are only binding subsequent to written confirmation. The same applies to discrepancies and amendments to the contract and delivery schedule.
2. Should the supplier have concerns regarding the way in which Miksch GmbH wishes procedures to be carried out, the supplier is to inform Miksch GmbH promptly subsequent to performing the order or production request.
3. The supplier is obligated to provide written confirmation of the order promptly to Miksch GmbH within 7 days after receiving the order.
4. Subsequent to the placement of the order Miksch GmbH has the right to withdraw from the contract at any time. In this case, the supplier can claim compensation for the delivered performance including the proportional imputed profit. No further compensation is given for deliveries which have not been performed.

III. Pricing and payment

1. All prices agreed upon are fixed prices for the total contractual performance schedule. All additional claims are ruled out.
2. So long as no other written agreement exists, the price includes freight charges and transportation to the delivery address location, transportation insurance and packaging. In the exception of a price "off the shelf", "from the factory" or similar, Miksch GmbH assumes the costs only for the least expensive types of shipping and transportation; all on the carrier costs are to be covered by the supplier until transfer of the products takes place.
3. Bills can only be processed if these contain the same guidelines as displayed on our order request, and specify the designated reference order number; the supplier is responsible for consequences due to non-compliance, to the extent that the supplier is unable to prove otherwise.
4. To the extent that no other written agreement to the contrary exists, payment is to be made 60 days subsequent to receiving the bill by the method of our choice, subsequent to correct delivery and bill receipt, without any surcharge.
5. We maintain rights to offset receivables and payables and maintain rights of retention which are legally permitted.

IV. Delivery

1. Delivery times specified in the order are binding. Delivery time compliance is based upon the time at which entry of goods at our receiving centre is received or the timely acceptance of the goods.
2. The supplier is obliged to inform us in a prompt manner should complications arise or should it be known that the delivery time can not be upheld under the agreed upon conditions.
3. The supplier does not have the right to perform delivery in instalments or partial performance, unless a written agreement by Miksch GmbH has previously been granted.
4. Should the supplier deliver the goods late, the acceptance of later delivered goods or other types of performance, do not mean that Miksch GmbH waives any possible claims for compensation.
5. In the case of a delivery delay we have the right to demand a contract penalty fee of 0.1 % per day, with the total of a 5 % maximum of the delivery value. We maintain the right of other legal claims. The supplier has the right to prove that the delivery delay resulted in either no or a significantly lower amount of damage.
6. Should the supplier's delivery be delayed, after setting a reasonable period of grace Miksch GmbH has the right of choice for subsequent delivery and compensation due to delay of delivery, or compensation in place of delivery, or the right to retract the contract completely or partially.

V. Retention of title, supplies and equipment

1. With the transfer of the delivered products by the supplier, Miksch GmbH acquires ownership of the delivered products immediately.
2. To the extent we provide the supplier with parts, we retain ownership of these items. Handling or alterations made will be conducted by the supplier for Miksch GmbH. Should our goods with our reservation of title be processed with other items for which we do not have ownership, we thereby acquire the joint ownership of the new item in proportion to the value of our products (purchase price plus value added tax) at the time of production.
3. Should items which are owned by Miksch GmbH be mixed with other items not owned by Miksch GmbH and be mixed to an extent where the items are inseparable, Miksch GmbH thereby acquires joint ownership of the newly produced item in proportion of the value of the ownership title (purchase price plus value added tax) of the newly mixed items at the time in which mixing of the items takes place. Should the mixing take place in a way, that the items appear to be mainly those of the supplier, it is agreed, that the supplier is to transfer the proportional joint ownership; the supplier is to store the item for Miksch GmbH either for the sole ownership or joint ownership.
4. Miksch GmbH reserves title of tools; the supplier is obligated to use the tools solely for the production of the goods Miksch GmbH have ordered. The supplier is obliged to insure tools owned by Miksch GmbH against fire, water and theft. Simultaneously the supplier transfers all claims from the insurance policy to Miksch GmbH; Miksch GmbH hereby accepts this transfer. The supplier is obligated to implement the necessary maintenance and inspection work as well as repair work for the tools in a timely manner, at the cost to the supplier. Any breakdown which occurs is to be reported to Miksch GmbH immediately; should the supplier neglect to do so, the claim for compensation remains intact.

VI. Guarantee

1. The supplier guarantees that the delivery of products and services are state of the art engineering, whose pertinent legal terms, conditions and guidelines set forth by the authorities are complied with and commercial and industrial associations and professional association standards are complied with; products and services must exhibit the guaranteed quality and durability and not be afflicted with other defects.
2. Technical specifications as well as those from the supplier specific performance data are considered conditions which are guaranteed by the supplier of the product or service to be delivered by the supplier.
3. To the extent that individual discrepancies from the specifications mentioned in Section VI. 1 exist, the supplier is to obtain our written consent. The usual supplier guarantee obligation remains intact regardless of this agreement.
4. We are obligated to examine deliveries within a reasonable timeframe; a reasonable timeframe is considered 10 working days after the receiving of goods, or in the case of hidden deficiencies as soon as their discovery to the supplier.
5. The period of warranty is 36 months after the goods have been received, unless a longer period has been specified in the order or a longer period is legally required.
6. Miksch GmbH will be given the benefit of doubt that deficiencies, which have been determined by Miksch GmbH within the period of warranty, have been present subsequent to the passing of risk.
7. During the period of warranty, deficiencies which are determined in the delivery of goods or services are to be corrected without delay and free of charge including all extra charges according to our choice through repair, replacement, through replacement of the defective parts, or through a new delivery. The alleviation of these defects is to performed without delay.
8. Should the supplier not fulfil the warranty within a reasonable timeframe, Miksch GmbH can demand to withdraw from the contract or demand a cost reductions.
9. In pressing cases or if the supplier does not fulfil the warranty within the timeframe set, Miksch GmbH has the right at cost to the supplier, to replace defective parts, to make improvements, or to correct existing damages.
10. Upon subsequent delivery or subsequent improvement the warranty begins again according to Section VI. 5, for subsequent delivery of items and/or parts.
11. The supplier covers in the warranty the investigation into the cause of the defect, dismantling, assembly, working and material costs as well as transportation and other costs for sending damaged parts to and from the original place of performance or other specified location.

VII. Product liability, Infringement of industrial and property rights

1. The supplier takes the responsibility of demands which we may receive from third party claims which are based upon the product liability act, from patents or other protection infringements, or other legal terms directed against us, to the extent that the claims are derived from supplier product defects or the products infringe upon the rights of third parties.
2. The supplier is obligated, throughout the contract period to enter into and maintain product liability insurance with a minimum coverage of € 2,000,000.00 per case of damage. We maintain the right to demand an insurance confirmation of the amount of coverage from the supplier.

3. The supplier is obliged to cover the costs associated with an eventual recall, to the extent the recall is due to supplier product deficiencies or the extent to which a breach against third party rights results. Other legal claims remain intact.

VIII. Non-disclosure

1. The supplier is obliged to handle all samples, designs, drawings, calculations and the like, tangible and intangible information including electronic property and intellectual property as strictly confidential. Permission for the distribution of information to third parties requires explicit consent from Miksch GmbH in written form. Non-disclosure terms apply also subsequent to execution of the contract; this expires to the extent that samples, designs, drawings, calculations and the like, tangible and intangible information including electronic property and intellectual property become general knowledge in manufacturing. We maintain ownership and intellectual property rights of these documents. After the order has been processed these documents are to be returned to Miksch GmbH without solicitation.
2. The supplier is also obligated to ensure the extent legally possible that personnel, sub-suppliers or other third parties who are involved in submitting a quotation or in order performance, to adhere to the non-disclosure agreement. The supplier is liable for non-compliance of the non disclosure agreement by engaged personnel and third parties.
3. In the case of a of a breach against the conditions listed in sections VIII. 1. and VIII. 2. the supplier is obliged to pay a penalty of 30 % of the total contract volume, but no less than EUR 20,000.00. Each case of unauthorized use of information as listed above is accounted for as a new breach of contract. We maintain the right to seek additional damages or claims.

IX. Final provisions

1. Exclusively the rights under the Federal Republic of Germany applies excluding the UN purchase rights (CISG).
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 at 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.