

General Terms and Conditions

MICADO SMART ENGINEERING GmbH

1 Preamble

- 1.1 These General Terms and Conditions of Delivery shall apply unless the contracting parties have expressly agreed otherwise in writing. By placing an order or accepting delivery, the contractual partner declares its agreement with these General Terms and Conditions. These General Terms and Conditions shall also apply to future transactions, unless expressly agreed otherwise.
- 1.2 The following provisions regarding the delivery of goods apply analogously also to services.
- 1.3 The assembly conditions of the Austrian Association of the Mechanical Engineering and Steel Construction Industry also apply to assembly work.

2 Conclusion of contract

- 2.1 The contract is deemed to have been concluded if the seller has sent a written order confirmation after receipt of the order and this is not demonstrably contradicted by the buyer within 10 days. The order confirmation can also be sent by e-mail or another written means of communication.
- 2.2 Amendments and supplements to the contract require the written confirmation of the seller in order to be valid. The Buyer's terms and conditions of purchase shall only be binding on the Seller if they are recognized separately by the Seller.
- 2.3 If import and/or export licenses or foreign exchange permits or similar authorizations are required for the performance of the contract, the party responsible for obtaining them must make every reasonable effort to obtain the necessary licences or permits in good time.
- 2.4 The seller reserves the right to withdraw from the contract if the buyer does not fulfil his contractual obligations, in particular in the event of non-payment or failure to obtain the necessary permits.

3 Plans and documents

- 3.1 The information contained in catalogues, brochures, circulars, advertisements, illustrations and price lists etc. concerning weight, dimensions, capacity, price, performance and the like shall only be authoritative if express reference is made to them in the offer and/or the order confirmation.
- 3.2 Plans, sketches, cost estimates and other technical documents, which may also form part of the offer, as well as samples, catalogues, brochures, illustrations and the like, shall always remain the intellectual property of the seller. Any utilisation, duplication, reproduction, distribution and handing over to third parties, publication and presentation may only take place with the express consent of the owner.
- 3.3 All documents provided must be treated confidentially and may not be passed on to third parties without the express consent of the seller.
- 3.4 After termination of the contract, all documents must be returned immediately at the request of the seller.

4 Software, licenses and property rights

- 4.1 If software is included in the scope of delivery, the customer shall be granted a non-exclusive, non-transferable right to use the software supplied, including its documentation, for an appropriate fee. It is provided for use on or for the product intended for this purpose in return for payment of the corresponding fee. Use of the software on more than one system is prohibited
- 4.2 The Customer may only reproduce, revise or translate the software or convert the object code into a source code to the extent permitted by law (§§ 69a ff. UrhG). The Customer undertakes not to remove manufacturer's details in particular copyright notices or to change them without MICADO's prior express consent.
- 4.3 If the software of a manufacturer/pre-supplier is the subject of the service owed by MICADO, the Customer may only use this software in accordance with the licence/user conditions of the respective manufacturer/pre-supplier; at MICADO's request, the Customer must confirm its agreement with these conditions in writing, also in relation to the respective manufacturer/pre-supplier. The Customer shall be provided with these terms and conditions of licence/use upon request, even before conclusion of the contract.
- 4.4 All other rights to the software and the documentation, including the copies, shall remain with MICADO or the manufacturer/supplier of the software. The granting of sublicences by the Customer is not permitted.
- 4.5 The Customer undertakes not to modify the software without MICADO's express consent and to install all software updates provided free of charge by MICADO or the respective manufacturer/supplier. The Customer is obliged to activate software settings that result in software updates being made available upon request and to leave preset settings activated.
- 4.6 He shall also be obliged to make use of opportunities to call up software updates free of charge to which MICADO or the respective manufacturer/supplier refers him.
- 4.7 The transfer to third parties requires our written consent. If the software is transferred for the purpose of resale, the third party must ensure that these terms and conditions are recognised.
- 4.8 If the Customer declares its cancellation of the contract, the Customer's right to use any software licensed or otherwise provided by MICADO shall end. The Customer shall, at MICADO's option, (i) return all software, including any copies made, to MICADO, or (ii) destroy it and confirm this to MICADO in writing. The assertion of the defence of defects and corresponding rights of the Customer to refuse performance/retention due to defects shall remain unaffected by this.
- 4.9 Notwithstanding these provisions, MICADO shall remain entitled to create and offer similar customised software solutions resulting from other tasks of other customers.
- 4.10 In any case, MICADO retains a simple right to use the customised solution for internal purposes

5 Packaging

- 5.1 In the absence of a deviating agreement
 - a) The prices quoted do not include packaging;
 - b) the packaging is carried out in a customary manner in order to avoid damage to the goods on the way to the specified destination under normal transport conditions, at the buyer's expense and will only be taken back by agreement
 - c) The seller is not liable for damage to the packaging that occurs during transport.

- d) The type of packaging (e.g. cardboard box, pallets) is chosen at the discretion of the seller, unless otherwise agreed.

6 Transfer of risk

- 6.1 Unless otherwise agreed, the goods are deemed to be delivered "ex works" (EXW) (ready for collection). The transfer of risk takes place when the goods are made available for collection by the buyer.
- 6.2 In all other respects, the INCOTERMS shall apply in the version valid on the date of conclusion of the contract.
- 6.3 After the transfer of risk, the seller is not liable for loss or damage to the goods.
- 6.4 Unless otherwise agreed, the goods are not insured during transport. The buyer may take out transport insurance at his own expense. The buyer is obliged to provide evidence that such insurance has been taken out.

7 Delivery time

- 7.1 Unless otherwise agreed, the delivery period shall commence at the latest of the following dates:
- a) Date of the order confirmation;
 - b) Date of fulfilment of all technical, commercial and financial requirements incumbent on the buyer as agreed;
 - c) Date on which the seller receives a down payment to be made before delivery of the goods and/or a payment guarantee to be created or other payment security is opened.
- 7.2 The seller is authorised to make partial and advance deliveries.
- 7.3 If the delivery is delayed due to a circumstance occurring on the part of the seller which constitutes a reason for relief within the meaning of Art. 14, a reasonable extension of the delivery period shall be granted.
- 7.4 If the seller is responsible for a delay in delivery, the buyer can either demand fulfilment or declare withdrawal from the contract after setting a reasonable grace period.
- 7.5 If the period of grace provided for in Art. 6.4 has not been utilised through the fault of the seller, the buyer may withdraw from the contract by written notice with regard to all goods not yet delivered. The same shall apply to goods already delivered but which cannot be used in an appropriate manner without the outstanding goods. In this case, the buyer shall be entitled to a refund of the payments made for the undelivered goods or for the goods that cannot be used. In addition, if the delay in delivery was caused by gross negligence on the part of the seller, the buyer shall also be entitled to compensation for justified expenses which he had to incur up to the cancellation of the contract and which cannot be used any further. Goods that have already been delivered and cannot be used must be returned to the seller by the buyer.
- 7.6 If the buyer does not accept the goods provided in accordance with the contract at the contractually agreed place or at the contractually agreed time and if the delay is not due to an act or omission on the part of the seller, the seller may either demand fulfilment or withdraw from the contract, setting a grace period. If the goods have been separated, the seller may store the goods at the expense and risk of the buyer. The seller is also entitled to reimbursement of all justified expenses which he had to incur in order to fulfil the contract and which are not included in the payments received.

- 7.7 Claims of the Buyer against the Seller other than those specified in Art. 6 due to the Seller's default are excluded.
- 7.8 The Seller shall not be liable for delays caused by force majeure or other unforeseeable, exceptional circumstances for which the Seller is not responsible.
- 7.9 The seller undertakes to inform the buyer immediately of any delays and the reasons for them.

8 Acceptance test

- 8.1 If the Buyer requests an acceptance test, this must be expressly agreed with the Seller in writing upon conclusion of the contract. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture or at a place to be determined by the Seller during the Seller's normal working hours. The general practice for acceptance testing in the relevant branch of industry shall apply. The seller must inform the buyer of the acceptance test in good time so that the buyer can be present at the test or be represented by an authorised representative.
- 8.2 If the delivery item proves to be in breach of the contract during the acceptance test, the seller must immediately remedy any defect and restore the delivery item to the condition stipulated in the contract. The Buyer may only demand that the inspection be repeated in cases of significant defects. Following an acceptance test, an acceptance report must be drawn up.
- 8.3 If the acceptance test has shown that the delivery item has been executed in accordance with the contract and is in perfect working order, this must be confirmed by both contracting parties in any case. If the Buyer or its authorised representative is not present at the acceptance test despite timely notification by the Seller, the acceptance report shall only be signed by the Seller. In any case, the seller must provide the buyer with a copy of the acceptance report, the correctness of which the buyer can no longer dispute even if he or his authorised representative was unable to sign it due to lack of presence.
- 8.4 Unless otherwise agreed, the seller shall bear the costs for the acceptance test carried out. However, the buyer shall in any case bear the costs incurred by him or his authorised representative in connection with the acceptance test, such as travel expenses, living expenses and reimbursement of expenses.
- 8.5 The seller shall not be liable for delays in the acceptance test.
- 8.6 All information obtained during the acceptance test must be treated confidentially and may not be disclosed to third parties without the express consent of the seller. The Buyer undertakes to use all confidential information obtained during the acceptance test only for the intended purpose and not to disclose it to third parties
- 8.7 The seller is not liable for consequential damage caused by defects in the goods.

9 Price

- 9.1 Unless otherwise agreed, the prices are ex works of the seller without loading.
- 9.2 The prices are based on the costs at the time of the price submissions, unless otherwise. Should the costs change by the time of delivery, these changes shall be borne by the buyer.
- 9.3 Unless otherwise stated, prices are exclusive of taxes and duties.
- 9.4 All prices are quoted in EURO.

10 Payment

- 10.1 Payments shall be made in accordance with the agreed terms of payment. Insofar as no terms of payment have been agreed, one third of the price shall be due upon receipt of the order confirmation, one third upon design approval and the remainder upon delivery. Irrespective of this, the invoice must be paid no later than 30 days after invoicing.
- 10.2 The Buyer shall not be entitled to withhold payments due to warranty claims or other counterclaims not recognised by the Seller.
- 10.3 If the buyer is in arrears with an agreed payment or other performance, the seller may either insist on fulfilment of the contract and
- a) postpone the fulfilment of its own obligations until the payments in arrears or other benefits have been settled,
 - b) claim a reasonable extension of the delivery period,
 - c) demand payment of the entire outstanding purchase price,
 - d) if there is no reason for relief on the part of the buyer within the meaning of Art. 14, charge interest on arrears from the due date at a rate of 7.5% above the respective base rate of the European Central Bank (see Directive/EC of 29 June 2000 on combating late payment in commercial transactions), or declare withdrawal from the contract, granting a reasonable grace period.
- 10.4 In any case, the buyer shall reimburse the seller for the dunning and collection costs incurred as well as any interim storage costs as further damages caused by default.
- 10.5 If the Buyer has not made the payment or other performance owed upon expiry of the grace period pursuant to 9.3, the Seller may withdraw from the contract by written notice. At the Seller's request, the Buyer shall return to the Seller any goods already delivered and compensate the Seller for any reduction in value of the goods and reimburse the Seller for all justified expenses incurred by the Seller in the performance of the contract. With regard to goods not yet delivered, the Seller is entitled to make the finished or processed parts available to the Buyer and to demand the corresponding share of the sales price.
- 10.6 Unless otherwise agreed, all payments shall be made in EURO.
- 10.7 A change to our bank details requires prior consultation with the MICADO Accounting team by telephone or in person in order to be valid. Confirmation by email is not permitted.

11 Retention of title

- 11.1 The Seller reserves its title to the goods until the Buyer has fulfilled all financial obligations arising from the purchase contract in question. Until that time, the Seller is also entitled to mark its title to the goods externally and the Buyer is prohibited from removing or concealing the relevant marking. Furthermore, in the event of seizure of the reserved goods or other claims, the buyer is obliged to point out the seller's right of ownership and to inform the seller immediately.
- 11.2 Until full payment has been made, the buyer is prohibited from using the goods for production or the intended purpose, unless this has been expressly agreed with the seller.
- 11.3 If the goods are processed with other items belonging to the purchaser or third parties or become a dependent component thereof, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods delivered by us to the cost price of the other items.

- 11.4 The buyer is obliged to insure the goods subject to retention of title adequately against theft, damage and destruction and to provide the seller with proof of insurance cover on request.
- 11.5 The buyer may not sell, pledge or assign as security the goods subject to retention of title without the prior written consent of the seller.
- 11.6 If the buyer does not fulfil his obligations, the seller is entitled to withdraw from the contract and demand the return of the goods. In this case, the buyer is obliged to return the goods immediately.
- 11.7 The seller is entitled to withdraw from the contract and reclaim the goods if the buyer becomes insolvent.
- 11.8 The seller is entitled to utilise the returned goods at his own discretion.

12 Guarantee

- 12.1 In accordance with the following provisions, the seller is obliged to remedy any defect that impairs the usability of the goods and that is due to a defect in design, material or workmanship. The seller shall also be liable for defects in expressly stipulated properties.
- 12.2 This obligation shall only apply to defects that have occurred during a period of two years from the time of the transfer of risk in the case of single-shift operation or from the completion of assembly in the case of delivery with installation.
- 12.3 The buyer can only invoke this article if he immediately notifies the seller in writing of the defects that have occurred. The presumption rule of § 924 ABGB is excluded. If the defects are to be remedied by the seller in accordance with the provisions of this article, the seller informed in this way must, at his discretion, remedy the defects
 - a) repair the defective goods on the spot;
 - b) have the defective goods or the defective parts returned for the purpose of rectification
 - c) replace the defective parts;
- 12.4 If the seller has the defective goods or parts returned to him for the purpose of repair or replacement, the buyer shall bear the costs and risk of transport, unless otherwise agreed. Unless otherwise agreed, the repaired or replaced goods or parts shall be returned to the Buyer at the Seller's expense and risk.
- 12.5 The defective goods or parts replaced in accordance with this Article shall be at the Seller's disposal.
- 12.6 The seller shall only be liable for the costs of rectification of defects carried out by the buyer himself if he has given his written consent.
- 12.7 The seller's warranty obligation only applies to defects that occur under normal use and in compliance with the intended operating conditions. In particular, it does not apply to defects caused by: poor installation by the buyer or his authorised representative, poor maintenance, poor repairs or modifications carried out by a person other than the seller or his authorised representative without the seller's written consent, normal wear and tear.

- 12.8 The Seller shall only be liable for those parts of the goods which the Seller has procured from the subcontractor specified by the Buyer within the scope of the warranty claims to which the Seller itself is entitled against the subcontractor. If goods are manufactured by the Seller on the basis of design specifications, drawings or models provided by the Buyer, the Seller's liability shall not extend to the correctness of the design, but to the fact that the design was carried out in accordance with the Buyer's specifications. In such cases, the Buyer shall indemnify and hold the Seller harmless in the event of any infringement of industrial property rights. The Seller shall not assume any warranty for the acceptance of repair orders or for modifications or conversions of old or third-party goods or for the delivery of used goods.
- 12.9 From the beginning of the warranty period, the seller assumes no further liability than is stipulated in this article.
- 12.10 The seller is not liable for consequential damage caused by defects in the goods.
- 12.11 The limitation period for warranty claims shall be two years from the date of transfer of risk or, in the case of delivery with issue, from completion of installation.

13 Liability

- 13.1 It is expressly agreed that the seller shall not be liable to pay compensation to the buyer for damage to goods that are not the subject of the contract, for other damage and for loss of profit, unless it is clear from the circumstances of the individual case that the seller is guilty of gross negligence. The reversal of the burden of proof according to § 1298 ABGB is excluded. Liability for personal injury remains unaffected.
- 13.2 The object of purchase only offers the level of safety that can be expected on the basis of authorisation regulations, operating instructions, the seller's regulations on the handling of the object of purchase in particular with regard to any prescribed inspections and other information provided.
- 13.3 In the event of proven slight negligence on the part of the Seller, unless Article 12.1 applies, compensation shall be limited to 5 % of the order amount, up to a maximum of EUR 100,000.
- 13.4 All claims for damages arising from defects in deliveries and/or services must if the defect is not expressly recognised by the seller be asserted in court within one year of expiry of the contractually stipulated warranty period, otherwise the claims shall lapse.
- 13.5 The seller is not liable for indirect damages, including loss of profit or other consequential damages.
- 13.6 The Seller shall not be liable for damage caused by force majeure, including but not limited to natural disasters, war, terrorist attacks, official orders or other unforeseeable events for which the Seller is not responsible.

14 Consequential damage

- 14.1 Except as otherwise provided in these Conditions, Seller's liability to Buyer for loss of production, loss of profit, loss of use, loss of contracts or any other economic or indirect consequential loss is excluded. Indirect damages and consequential damages include all damages that are not directly caused by a defect in the goods but arise as a consequence thereof.

15 Reasons for discharge

- 15.1 The parties shall be released from the timely fulfilment of the contract in whole or in part if they are prevented from doing so by force majeure events. Only events which are unforeseeable and unavoidable for the parties, and which do not come from their sphere of influence shall be deemed to be events of force majeure. However, strikes and labour disputes are to be regarded as force majeure events. Examples of force majeure include natural disasters, war, terrorist attacks, official orders and other unforeseeable events.
- 15.2 However, the Buyer hindered by an event of force majeure may only invoke the existence of force majeure if it provides the Seller without delay, but at the latest within 5 calendar days, with a registered letter confirming the beginning and foreseeable end of the hindrance, confirmed by the respective government authority or chamber of commerce of the country of delivery, stating the cause, the expected effect and duration of the delay. The seller is also obliged to inform the buyer immediately of the existence of force majeure.
- 15.3 In the event of force majeure, the parties must make every effort to eliminate or minimise the difficulties and foreseeable damage and keep the other party informed of this on an ongoing basis. Otherwise, they shall be liable to pay damages to the other party. Dates or deadlines that cannot be met due to the effects of force majeure shall be extended by a maximum of the duration of the effects of the force majeure or, if applicable, by a period to be determined by mutual agreement.
- 15.4 If a circumstance of force majeure lasts longer than four weeks, the buyer and seller shall seek a solution to the technical consequences through negotiations. If no amicable solution can be reached, the seller may withdraw from the contract in whole or in part

16 Data protection

- 16.1 The seller is authorised to store, transmit, revise and delete personal data of the buyer in the course of business transactions. The processing of the data is based on the fulfilment of the contract in accordance with Art. 6 para. 1 lit. b GDPR.
- 16.2 Personal data is processed exclusively for the purpose of contract fulfilment and to maintain ongoing business relationships. The data will only be passed on to third parties if this is necessary for the fulfilment of the contract or if the buyer has expressly consented to this.
- 16.3 The parties undertake to maintain absolute confidentiality vis-à-vis third parties with regard to the knowledge they obtain from the business relationship.
- 16.4 The buyer has the right to information, correction, deletion and objection regarding his stored personal data. Enquiries in this regard can be addressed to the seller's data protection officer.
- 16.5 The seller undertakes to take appropriate technical measures to ensure the security of personal data and to protect it from unauthorised access, loss or destruction. These measures include the encryption of data, regular security checks and the training of employees in data protection.

17 Place of jurisdiction, applicable law, place of fulfilment

- 17.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the Austrian court with local jurisdiction for the seller's registered office. However, the seller may also appeal to the court having jurisdiction for the buyer.

- 17.2 The parties may also agree on the jurisdiction of an arbitration tribunal. In this case, the arbitration proceedings shall be conducted in accordance with the rules of the International Chamber of Commerce (ICC). The place of arbitration shall be Innsbruck, Austria, and the language of the arbitration proceedings shall be German.
- 17.3 The contract shall be governed by Austrian law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1988/96. This choice of law shall not apply if mandatory consumer protection regulations of the country in which the buyer has his habitual residence deviate.
- 17.4 The place of fulfilment for delivery and payment shall be the registered office of the seller, even if the handover takes place at a different location as agreed.
- 17.5 The contract language is German.