

General Terms and Conditions of Supply at MIWEKO Mikrowellen-Hochfrequenz GmbH

(MIWEKO)

Section 1: Scope

(1) All supply, services and offers of MIWEKO are governed exclusively by these General Terms and Conditions of Supply. This document forms a part of all the agreements concluded by the supplier MIWEKO (hereinafter known as: "MIWEKO") with its contractual partners (hereinafter also known as: "Contractor") on the subject of the supply or services offered by MIWEKO. They apply to all future supply, services or offers to the Contractor even if they are not separately agreed again.

(2) Terms and conditions of the Contractor or of third-parties do not apply even if MIWEKO does not object to their validity in an individual case. Even if MIWEKO makes reference to a document that contains or refers to the terms and conditions of the Contractor or a third party, this shall not constitute agreement with the validity of these terms and conditions.

Section 2: Offer and contract conclusion

(1) All offers made by MIWEKO are non-binding and without obligation unless they are specifically characterized as being binding or contain specific acceptance periods. MIWEKO shall have a period of fourteen days from the receipt of an order or request in which to accept the order or request.

(2) The legal relationship between MIWEKO and the Contractor is governed exclusively by the contract concluded through the written order confirmation provided by MIWEKO, including these General Terms and Conditions. This contract represents the entirety of all the agreements on the subject matter of the contract that are concluded between the contractual parties. Verbal agreements by MIWEKO before the conclusion of this contract are not legally binding, and any verbal agreements made between the contractual parties shall be replaced by the written contract as long as it is not expressly the result of the verbal agreements that they continue to be binding.

(3) Supplements and changes to the agreements, including these General Terms and Conditions of Supply, must be made in writing to be effective. With the exception of managing directors or authorized representatives, the employees of MIWEKO are not authorized to make any verbal agreements that differ from these provisions. Transmissions via telecommunication shall suffice to meet the requirement of written form, in particular messages sent via telefax or e-mail, as long as they represent copies of the signed declaration.

(4) Statements by MIWEKO on the subject matter of the supply or service (such as those on weight, dimensions, consumption, load capacity, tolerances or technical data) and our representations thereof (such as drawings or illustrations) are considered only approximately applicable if utilization for the contractually intended purpose does not require precise conformity. They do not represent guaranteed characteristics, but rather descriptions or designations of the supply or service. Commercially customary tolerances and deviations that are based upon legal regulations or that represent technical improvements are permissible, as is the replacement of components with parts of equal value, if they do not affect usability for the contractually intended purpose.

(5) MIWEKO retains its ownership of or copyright in all the offers and cost estimates it submits as well as in any drawings, illustrations, calculations, brochures, catalogs, models, tools or other documents or aids made available to the Contractor. The Contractor may not make these items accessible to third parties, publish them, use them itself or through third parties, or reproduce them, either as such or in their contents, without the express consent of MIWEKO. The Contractor must return them to MIWEKO in their entirety and destroy any copies that may have been made if they are no longer needed in the orderly course of business or if the negotiations do not lead to the conclusion of a contract.

Section 3: Prices and payment

(1) The prices apply to the scope of the supply and services listed in the order confirmation. Additional or special services will be invoiced separately. Prices are ex-works exclusive of packaging, statutory sales or value-added tax, and, in the case of export deliveries, customs duties and fees or other public charges.

(2) Invoiced amounts must be paid within thirty days without any deductions unless otherwise agreed in writing. The date of payment is defined as the date when payment was received by MIWEKO. Checks are not valid as a means of payment. If the Contractor does not render payment by the due date, any outstanding amounts will be subject to interest of 8% p. a. as of the due date; the right to claim higher interest or additional damages in cases of payment default shall remain unaffected.

(3) Set-offs against counterclaims of the Contractor or the retention of payments owing to such claims is only permissible if the counterclaims are undisputed or have been legally upheld.

(4) MIWEKO is entitled to require prior payment or collateral before providing or completing outstanding supply or services if circumstances are made known to it after contract conclusion that are likely to impair the Contractor's creditworthiness significantly and that endanger the Contractor's payment of outstanding MIWEKO receivables from that contractual relationship (including accounts from other individual orders for which the same master agreement applies).

Section 4: Delivery and delivery times

(1) Deliveries are made ex works/ex warehouse.

(2) Delivery dates and deadlines proposed by MIWEKO for its supply and services are considered only approximately applicable unless a specific date or deadline was expressly agreed. If shipping was agreed, delivery dates and deadlines refer to the time of handover to the shipper, freight forwarder or third party commissioned with the transport.

(3) Without prejudice to its rights in the event of a default by the Contractor, MIWEKO can demand an extension of the supply and service deadlines or a delay in their dates by the same period of time during which the Contractor does not fulfill its contractual obligations toward MIWEKO.

(4) MIWEKO assumes no liability for the impossibility of a delivery or for delays in delivery if they are caused by *force majeure* or other events that are not foreseeable at the time of contract conclusion (such as operating disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labor, energy or raw materials, difficulties in procuring necessary official approvals, or the non-delivery or incorrect or untimely delivery of supplies from suppliers) and if MIWEKO is not responsible for them. If such events significantly impair MIWEKO's provision of the supply or delivery or make it impossible, and the impairment is not temporary, MIWEKO is entitled to withdraw from the contract. In the event of impairments that are temporary, the deadlines for supply or services shall be extended or the dates postponed by the duration of the impairment plus a reasonable start-up period. If the Contractor cannot reasonably be expected to accept the supply or service owing to the delay, it may withdraw from the contract by means of an immediate written declaration to MIWEKO.

(6) If MIWEKO is in default of supply or service, or if supply or service becomes impossible, regardless of the reason, MIWEKO's liability is limited to claims for damages as defined in Section 8 of these General Terms and Conditions of Supply.

Section 5: Place of fulfillment, shipping, packaging, transfer of risk, acceptance

(1) Unless otherwise agreed, the place of fulfillment for all obligations arising from this contract is Windach.

(2) The type of shipping and packaging are subject to the due discretion of MIWEKO.

(3) Risk is transferred to the Contractor at the latest with the handover of the item to be delivered (for which the beginning of the loading process is regarded as definitive) to the shipper, freight forwarder or other third party commissioned with shipment. This also applies to partial deliveries or when MIWEKO has taken over other services (such as shipment or installation). If the shipment or transfer is delayed owing to circumstances caused by the Contractor, risk is transferred to the Contractor from the day on which the delivery item is ready for shipment and MIWEKO has communicated this to the Contractor.

(4) The Contractor shall bear any storage costs incurred after the transfer of risk. If storage is provided by MIWEKO, storage costs amount to 0.25% of the invoice amount of the stored delivery item per expired week of storage. The right to claim or prove higher or lower storage costs is expressly reserved.

Section 6: Warranty, material defects

(1) The warranty period amounts to one year from delivery.

(2) The delivered items must be carefully inspected immediately after their delivery to the Contractor or the third parties named by it. With regard to obvious defects or other defects that would have been visible during an immediate and careful inspection, such defects are considered to be accepted by the Contractor if MIWEKO does not receive a written complaint within seven workdays of delivery. With regard to other defects, the delivered items are considered accepted by the Contractor if the complaint is not received by MIWEKO within seven workdays of the point at which the defect was visible; if the defect was visible to the Contractor during normal use at an earlier point in time, this earlier point shall be considered definitive for the beginning of the period for making a complaint. At MIWEKO's request, a delivery item for which a complaint has been submitted must be returned, freight paid, to MIWEKO.

(3) In the event of material defects in the delivered items, MIWEKO is obligated and authorized to choose, within a reasonable period of time, between a remedy and a replacement delivery. In the event of a failure – that is, the impossibility, unacceptability, refusal or undue delay of the remedy or replacement delivery – the Contractor may withdraw from the contract or reduce the purchase price appropriately.

(4) If MIWEKO is responsible for the defect, the Contractor can claim compensation for damages under the conditions defined in Section 8.

(5) In the event of defects in components from other manufacturers that MIWEKO cannot remedy for licensing or other reasons, MIWEKO shall, at its discretion, assert its warranty claims against the manufacturer and supplier on the Contractor's account or assign them to the Contractor. In the event of such defects, warranty claims against MIWEKO exist under other conditions and as defined in these General Terms and Conditions of Supply only if the legal enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or is hopeless, for instance owing to bankruptcy. The statute of limitations of any affected warranty claims of the Contractor against MIWEKO is suspended for the duration of the legal dispute.

(6) The warranty claim expires if the Contractor alters, or has third parties alter, the delivered item without the consent of MIWEKO, thus rendering a remedy of the defect impossible or unreasonable. In this case, the Contractor must bear any additional costs of remedying the defect that are attributable to the alteration.

(7) The delivery of used items as agreed with the Contractor in individual cases takes place under the exclusion of any warranty for material defects.

Section 7: Property rights

(1) As defined in Section 7 of this document, MIWEKO guarantees that the delivered item is free of industrial property rights or copyrights of third parties. Each of the contractual parties shall inform the other immediately in writing of any claims asserted against it for the infringement of such rights.

(2) In the event that a delivered item infringes on industrial property rights or the copyright of a third party, MIWEKO shall, at its discretion and expense, either alter or exchange the delivered item in such a fashion that the rights of third parties are no longer infringed, but the delivered item continues to fulfill its contractually agreed function, or procure the Contractor the right of use by concluding a license agreement. If MIWEKO is not successful in this regard within a reasonable period of time, the Contractor is entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for damages by the Contractor are subject to the limitations defined in Section 8 of these General Terms and Conditions of Supply.

(3) In the event of legal infringements through products from other manufacturers that were supplied by MIWEKO, MIWEKO shall, at its discretion, assert its claims against the manufacturers and presuppliers on the Contractor's account or assign them to the Contractor. As defined in this Section 7, warranty claims against MIWEKO exist in these cases only if the legal enforcement of the above-mentioned claims against the manufacturer and supplier was unsuccessful or is hopeless, for instance owing to bankruptcy.

Section 8: Liability for damages based on fault

(1) The liability of MIWEKO for damages, on whatever legal grounds, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during negotiations and tortious acts, is limited as defined in this Section 8 insofar as MIWEKO is at fault in such cases.

(2) MIWEKO is not liable in the event of the simple negligence of its bodies, legal representatives, employees or other vicarious agents if the negligence does not amount to an infringement of its essential contractual obligations. Essential obligations include the obligation to deliver the supplied item punctually, its freedom from defects that would considerably impair its functionality or usability, and obligations of consultation, protection and duty of care that enable the contractually intended use of the supplied item by the Contractor or have the purpose of protecting the life and health of the Contractor's staff or its property from considerable damage.

(3) If MIWEKO is liable on the grounds of and according to Section 8 (2), this liability is limited to damages that MIWEKO foresaw as a possible consequence of a breach of contract at the time the contract was concluded, or should have foreseen if it had applied due care and attention. Indirect and consequential damage that is the consequence of defects in the supplied items is moreover only eligible for compensation if this damage can typically be expected during the intended use of the supplied item.

(4) In the event of liability for simple negligence, MIWEKO's obligation of replacement for material defects and any other pecuniary damage resulting from it is limited to the amount of EUR 1,000,000.00 per damaging event (corresponding to the current cover of its product liability insurance), even if essential contractual obligations have been breached.

(5) The afore-mentioned exclusions and limitations of liability apply to the same extent to the bodies, legal representatives, employees and other vicarious agents of MIWEKO.

(6) If MIWEKO provides technical information or consulting and this information or consulting is not part of the contractually agreed scope of supply owed by MIWEKO, it is provided free of charge and to the exclusion of any liability.

(7) The limitations in this Section 8 do not apply to MIWEKO's liability in cases of willful conduct, guaranteed characteristics, injury to life, limb or health, or claims arising from product liability laws.

Section 9: Retention of ownership

- (1) The retention of ownership agreed here is intended to secure all existing and future claims of MIWEKO against the Contractor that arise from the supply relationship between the contractual parties.
- (2) The goods supplied by MIWEKO to the Contractor remain the property of MIWEKO until all secured claims have been paid in full. The goods and any other goods that take their place and that are covered by the following provisions on retention of ownership will hereinafter be known as “retained goods”.
- (3) The Contractor shall hold the retained goods free of charge for MIWEKO.
- (4) The Contractor is entitled to process and sell the retained goods as part of the ordinary course of business until the occurrence of an enforcement event (paragraph 9). Pledges and collateral assignments are not permitted.
- (5) If the retained goods are processed by the Contractor, the parties agree that MIWEKO acquires ownership – or co-ownership (fractional ownership), if processing involves materials from several owners or the value of the processed item is higher than the value of the retained goods – directly of the newly created item in the proportion of the retained goods to the value of the newly created item. In the event that no such ownership is acquired by MIWEKO, the Contractor shall now transfer its future ownership or co-ownership in the newly created item in the proportions described above to MIWEKO as collateral. If the retained goods are joined to or inseparably mixed with other items to form a unit, and if one of the other items can be regarded as the main item in that unit, then, to the degree that the main item in the unit belongs to the Contractor, the Contractor transfers to MIWEKO its co-ownership in the unit in the proportion described in the first sentence of this paragraph.
- (6) In the event of a resale of the retained goods, the Contractor now assigns MIWEKO as collateral the claim against the buyer arising from that sale – or, in the event of MIWEKO’s co-ownership of the retained goods, a share corresponding to that co-ownership. The same applies to other claims that take the place of the retained goods or otherwise arise with regard to the retained goods, such as insurance claims or claims from tortious acts in the event of loss or destruction. MIWEKO revocably authorizes the Contractor to collect any claims assigned to MIWEKO in its own name. MIWEKO may only revoke this authorization in the case of an enforcement event.
- (7) If third parties seize the retained goods, in particular through garnishment, the Contractor will notify them immediately of MIWEKO’s ownership status and inform MIWEKO so that MIWEKO can exercise its rights of ownership. If the third party is not in a position to reimburse MIWEKO the judicial or extra-judicial costs that arise in this conjunction, the Contractor shall be liable to MIWEKO for these costs.
- (8) MIWEKO will release the retained goods, or the claims or goods that take their place, if their value exceeds the value of the secured claims by more than 50%. MIWEKO is entitled to choose the items thus released.
- (9) If MIWEKO withdraws from the contract because the customer has breached it, in particular through default of payment (enforcement event), MIWEKO is entitled to demand the retained goods.

Section 10: Final provisions

- (1) If the Contractor is a businessperson, a legal entity under public law, or a special fund under public law, or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between MIWEKO and the Contractor shall be either Windach or the domicile of the Contractor, at MIWEKO’s discretion. However, Windach shall be the exclusive place of jurisdiction for any claims filed against MIWEKO. Mandatory legal regulations governing exclusive jurisdiction are unaffected by this provision.

(2) The relationship between MIWEKO and the Contractor is governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods (CISG) of April 11, 1980 (CISG) does not apply.

(3) If the contract or these General Terms and Conditions of Supply contain loopholes, those legally effective provisions shall be considered as filling those loopholes that the contractual partners would have agreed according to the commercial aims of the contract and the purpose of these General Terms and Conditions of Supply if they had been aware of the loopholes.

Note:

The Contractor is aware that in accordance with Section 28 of the German Federal Data Protection Act (BDSG), MIWEKO stores data arising from the contractual relationship for the purpose of processing it, and retains the right to transmit this data to third parties (such as insurance companies) if this is required in order to fulfill the terms of the contract.

Owing to the laws of the USA and the Federal Republic of Germany, the export of goods delivered by MIWEKO is only permitted with the prior consent of MIWEKO.