

## **MIKROSAM DOO - GENERAL TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS**

1.1 Unless expressly stated otherwise, in these General Terms and Conditions of Sale the following expressions have the following meaning:

1.1.1. 'Seller' means Mikrosam DOO Prilep

1.1.2. 'Buyer' means the entity to whom the Seller sells an Asset.

1.1.3. 'End User' means the entity that is intended to ultimately use the Asset, when this entity is different from the Buyer.

1.1.4. 'Parties' means the Seller and the Buyer (and the End User where applicable) jointly.

1.1.5. 'Quotation' means the Seller's Quotation for sale of an Asset.

1.1.6. 'Order' means Buyer's purchase order for an Asset, according to the Quotation.

1.1.7. 'Order confirmation' means the Seller's confirmation of the Buyer's Order.

1.1.8. 'Contract' means the separate written agreement, including all annexes to it, signed between the Seller and the Buyer for the purpose of purchasing an Asset. The Quotation, the Order and the Order confirmation shall have the meaning of 'Contract' in case a separate written agreement is not signed. If there is any inconsistency between these three documents, the following order of precedence shall apply:

- the Order confirmation
- the Quotation and
- the Order.

1.1.9. 'Asset' means the products to be supplied by the Seller to the Buyer pursuant to the Contract.

1.1.10. 'GTCS' means these General Terms and Conditions of Sale.

### **2. OFFER AND CONCLUSION OF CONTRACT**

2.1. These GTCS apply exclusively for the Seller's offers, deliveries and services. Any conflicting General Terms and Conditions of Purchase of the Buyer are hereby rejected. They shall not be recognized even if we do not expressly reject them again after receipt.

2.2. Contract between the Parties shall be concluded in writing. Unless otherwise expressly stated or referred to in the contract, the Seller has not given any assurances or undertakings to the Buyer.

2.3. Verbal collateral agreements, assurances/undertakings or any other additional agreements must be confirmed in writing by the Parties.

### **3. PRICES AND PAYMENT TERMS**

3.1. The prices payable by Buyer for the Asset to be supplied by the Seller under these GTCS will be specified in the applicable Contract. Unless otherwise expressly stated in the Contract, all prices shall be in euros.

3.2. Unless otherwise expressly stated in the Contract, payment shall be made as follows:

- 40% of the total price shall be paid at the time the Order is placed;
- 50% of the total price shall be paid after the Pre-acceptance is executed and before shipment;
- 10% of the total price shall be paid upon completion and installation at End User's site.

### **4. DELIVERY TERMS**

4.1. EX WORKS Prilep, R.N. Macedonia, in accordance with the Incoterms 2020 rules.

4.2. Transportation and insurance of the Asset in favor of the Buyer for the entire transportation period and against all risks will be arranged and paid by the Buyer.

### **5. SCOPE OF DELIVERY AND DELIVERY TIMES**

5.1. The scope of delivery is determined according to the content of the Contract. Illustrations of the delivery item/Asset in offers and brochures merely represent approximate performance specifications and are not an assurance or a warranty, nor do they represent a characteristic of the Asset. Deviations do not constitute a defect. The same applies to references to standards, any special technical information or technical rules, descriptions or the like. These too are purely informative, descriptive details and on no account characteristics of the Asset that substantiate a quality defect.

5.2. Delivery times are separately agreed in writing between the Seller and the Buyer, and are subject to change. The delivery period begins with the receipt of an agreed advance payment from the Buyer, following the Order confirmation to the Buyer, provided that all the unresolved points of the order execution have been clarified between the Seller and the Buyer and any other conditions which have to be fulfilled by the Buyer have been met. Otherwise the delivery period shall only commence once the aforementioned conditions have been met.

5.3. If applicable, within 30 (thirty) days of signing the Contract, the Buyer should provide a valid End User Certificate to the Seller for export license application. If the Buyer is unable to provide the End User Certificate

within 30 (thirty) days, the execution of the Contract will be prolonged for the same period as the delay in providing the End User Certificate to the Seller.

5.4. In the event that the necessary official import or export licenses are not granted or if it is impossible to execute the Contract due to official import or export bans for which none of the Parties is responsible, the Seller is then entitled to withdraw from the Contract, even if it took responsibility for applying for the import or export license. In these cases, the Buyer has no claims against the Seller.

5.5. The established delivery period may be modified by either party in case of Force Majeure or unforeseen circumstances which prevent its fulfillment.

## **6. PRE - ACCEPTANCE**

6.1. The Seller will inform the Buyer in writing, by e-mail, at least 15 (fifteen) calendar days before the date of readiness of the Asset for Pre-acceptance tests. The exact date of Pre-acceptance, as well as the date(s) of the Buyer's/End User's representatives' arrival for Pre-acceptance, will be agreed by the Parties additionally in writing by e-mail.

6.2. Pre-acceptance will be arranged at the Seller's address.

6.3. Pre-acceptance activities include:

- Visual check in accordance with the scope of supply and technical and functional specifications
- Testing of the functions
- Signing of preliminary approval document (Pre-acceptance Certificate)

6.4. Pre-acceptance tests will be done according to the Seller's standard testing. All raw materials necessary to perform Pre-acceptance tests will be supplied by and at the expense of the Buyer and/or End User. In case of non-delivery of the raw materials by the Buyer and/or End User for the Pre-acceptance tests, the Pre-acceptance tests of the Asset will be arranged with free-running.

6.5. The duration of the Pre-acceptance, including initial training, will be additionally agreed.

6.6. Following a successful Pre-acceptance, Parties will sign a Pre-acceptance Certificate.

6.7. When the Buyer's and/or End User's representatives cannot attend the Pre-acceptance due to reasons not depending on the Seller, or if they do not sign the Pre-acceptance Certificate without a reasonable explanation, the Pre-acceptance Certificate will be valid with the signature of the Seller only.

6.8. Air tickets, accommodation, food and local travel to/from Prilep, Macedonia for the End User's/Buyer's representatives shall be at the Buyer's expense.

6.9. If during the Pre-acceptance, the Buyer/End User requests a modification/alteration/supplementation etc. of the design of the Asset, which is not previously agreed with the technical specifications and if the Seller accepts it, then any such modification/alteration/supplementation etc., shall be at the Buyer's expense according to an additional offer.

## **7. PACKING AND MARKING**

7.1. The Seller is responsible for proper packing of the Asset.

7.2. The Asset will be packed in wooden boxes and/or crates, except when the Buyer provides the Seller with an information that the country where the Asset will be transported has specific packing requirements.

7.3. Packing and storage will provide full safety of the Asset from any kind of damage or corrosion during its transportation by all kinds of transport.

7.4. Marking of the packages will contain the following information:

- name of the Seller
- number of the shipping package
- dimensions and weight of the package.

7.5. The packed Asset must be stored indoors in a dry place, away from moisture and other inadequate weather conditions at all times, otherwise the Seller shall not be responsible for the proper functioning, i.e. the functioning of the Asset in general.

7.6. In case of violation of the integrity of the packaging or mismatch of the number of packages in the Packing List, the Buyer/End User and the Forwarder should immediately draw up a Statement of the fact, one copy for each Party, and send it to the Seller without delay. The same fact must be noted in the Waybill (CMR/BOL etc.) upon arrival of the Asset at the Buyer's/End User's site. Should the Buyer/End User fail to fulfill the obligations provided herein, all further claims for visible damages and/or inconsistencies regarding the Asset shall be rejected.

## **8. DOCUMENTS**

8.1. The Seller arranges all necessary documentation for export, including the following shipping documentation:

- Shipping invoice – original
- Packing list – original
- Customs export declaration (EX-1) - copy
- Waybill (CMR/BOL etc., as applicable) – copy.

8.2. The technical documentation of the Asset will be provided in English language and shall be sent together with the Asset.

## **9. INSTALLATION, START-UP, TRAINING AND FINAL ACCEPTANCE**

The following conditions are only applicable for orders where installation is necessary.

9.1. The Seller will send experts for the installation and training at the Buyer's/End User's premises. The whole installation procedure will be instructed and guided by the Seller's expert team.

9.2. The duration of the installation and training will be additionally agreed.

9.3. Before installation starts, representatives from the Seller and the Buyer and/or the End User shall draw up a Record regarding the condition of the packages and the Asset packed therein.

9.4. During installation, the Buyer/End User will have to comply with the installation plan which will be sent to the Buyer before installation.

9.5. If some of the Buyer's/End User's obligations defined in the installation plan are not fulfilled, the Seller is entitled to cancel, i.e. to suspend the installation activities, until all the conditions are fulfilled. If the conditions are not fulfilled within the additional period agreed between the Parties, the Seller shall be entitled to retain all the payments and to terminate the Contract, without any further obligations arising from the Contract.

9.6. The date of installation and training as well as the terms of the Seller's experts' arrival and their work schedule at the End User's premises will be agreed and determined by the Parties in advance.

9.7. Following a successful installation and training of the Asset, Parties will sign a Final Acceptance Certificate.

9.8. In case the Final Acceptance Certificate is not signed by the fault of the Buyer and/or the End User, latest 100 (hundred) days after the delivery, the Final Acceptance Certificate will be valid with the signature of the Seller only.

9.9 No action for lack of conformity can be taken by the Buyer, whether before judicial or arbitral tribunals, after 1 (one) year from the date of arrival of the Asset at the End User's premises. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the Asset, or make a counter-claim thereon, in defence to any action taken by the Seller against the Buyer for non-performance of Buyer's obligations.

## **10. GUARANTEES**

10.1. The Seller guarantees normal operation of the Asset for 24 (twenty-four) months from the installation date, but not more than 30 (thirty) months from the arrival of the Asset at the End User's premises, whichever occurs first. The above guarantee period covers all parts and labor.

10.2. The warranty is invalid if the Asset is not serviced in accordance with the instructions given by the Manufacturer/Seller, which will be provided by the Seller to the Buyer in paper/written and electronic form in the User's manual.

10.3. Any replacement and/or repair of Parts/Materials of the Asset, which are at the Buyer's request and/or by Buyer's fault, during the Warranty Period and afterward, shall be at the Buyer's expense.

10.4. If the signing of the Final Acceptance Certificate is unreasonably withheld by the Buyer/End User, then the warranty period shall be reduced accordingly for the period of such delay.

10.5. Unless approved in writing by the Seller, the Buyer/End User must not use the Asset in production before the Final Acceptance Certificate is signed by both parties, otherwise the warranty period starts at the first moment of such use.

## **11. LATE DELIVERY AND PENALTY**

11.1. Should the Seller fail to make the delivery on time as stipulated in the Contract plus 15 calendar days grace period, by its solely fault, the Seller agrees to pay a penalty charged at a rate of 0, 2 % per a week of the total Contract price for every week of such delay calculated from the 16<sup>th</sup> day of such delay. Parties agree that the total penalty shall not exceed 2% of the total Contract price.

11.2. A penalty for delay shall not be requested from the Seller due to the failure of the Buyer to fulfill its obligations under the Contract and these GTCS.

11.3. The Seller shall not be held liable for any delay, or non-delivery of the Asset, that is caused by the suspension, delayed issuance, or non-issuance of the export license by the relevant authority in the Seller's country. In such a case the Seller shall have no obligation for paying any penalties, compensations or liquidated damages to the Buyer/End User and the delivery time (except in case of non-issuance of the export license) shall be extended accordingly, or for a period mutually agreed between the Parties.

11.4. Should the Buyer fail to accept the Asset within 30 calendar days from the agreed shipment date as stipulated in the Contract, with the exception of Force Majeure causes specified in Article 13 of these GTCS,

then the Buyer will pay the Seller the costs for storage of the Asset.

## **12. LIMITATION OF LIABILITY**

12.1. Except in cases of gross negligence or willful misconduct, the liability of the Seller to the Buyer/End User for any and all claims, losses, damages, or expenses of any kind or nature whatsoever arising out of or related to the Contract and/or these GTCS (including its termination), regardless of the form of action, shall be limited to direct damages only and shall not exceed the total amount paid by the Buyer to the Seller under the Contract.

12.2. Neither party shall, be liable to the other Party for loss of profit, or for any indirect or consequential loss (including but not limited to loss of use of any goods, loss of production, loss of contracts, financial loss, loss of reputation or for any special, indirect, punitive or consequential loss or damage) arising out of or in connection with the Contract and/or these GTCS, even if such party has been advised of the possibility of such damages.

## **13. FORCE MAJEURE**

13.1. The Parties are released from responsibility for partial or complete nonfulfillment of their liabilities under these GTCS and/or contractual execution if this non-fulfillment was caused by circumstances of Force Majeure, namely: war or hostilities, mobilization, government measures, sabotages, work disputes, fire, flooding, earthquakes, epidemics, pandemic, etc., provided these circumstances have directly affected the execution of the Contract (also if they occurred at a Seller's supplier). In this case, the time for fulfillment of the Contract obligations is extended for a period equal to that during which such circumstances last plus a reasonable start-up time that meets the Seller's operational requirements. Certificates from the Chamber of Commerce shall be considered evidence of the existence of the above-mentioned events and their duration.

13.2. The Party for which it becomes impossible to meet the obligations under the Contract and/or these GTCS should notify the other Party in writing for the beginning and cessation of the above circumstances as soon as possible, but in any case, not later than 10 (ten) days from the moment the affected Party becomes aware of the Force Majeure circumstances.

13.3. If these circumstances last longer than 3 (three) months, then each Party will be entitled to terminate the whole Contract or any part of it or renegotiate the Contract. Such events shall relieve respective Party of

its obligations after the occurrence of this event. All other financial obligations of the Buyer, which are caused by already made purchases of raw materials, components, services and any other orders made by the Seller and which are related to the production of the Asset until the moment of occurrence of the event of Force Majeure, shall be reimbursed to the Seller by the Buyer.

## **14. NON SOLICITATION**

14.1. During the term of the contractual execution and for a period of 2 (two) years thereafter, neither party will solicit, recruit, hire, or otherwise pursue for work or employment any person employed by or otherwise working for the other party during the term of the contractual execution without the written consent of such other party.

## **15. CONFIDENTIALITY**

15.1. Any of the Seller's scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method, any concepts, samples, reports, data, know-how, works-in-progress, drawings, photographs, development tools, specifications, software programs, source code, object code, flow charts, databases and any other information that should reasonably be recognized, should be treated as Confidential Information by the Buyer and/or the End User.

15.2. Notwithstanding the foregoing, "Confidential Information" shall not include any information that: (i) is already known to or is already in the Buyer's/End User's lawful possession at the time of contractual negotiations or contractual execution; (ii) is in the public domain at the time of disclosure; (iii) is independently developed not in connection with the order; (iv) is disclosed by a third party with written approval of the owner of such information; or (v) is required to be disclosed by a court or other administrative body of competent jurisdiction, provided that the Buyer/End User provides prompt notice prior to any such mandated disclosure.

15.3. The Buyer/End User shall use any Confidential Information solely to the extent necessary in connection with contractual negotiations or contractual execution.

15.4. The Buyer/End User will not disclose to any third party and will keep confidential the information received, except to its employees, representatives or agents, who need to have access to the Confidential Information for the purpose of carrying out their duties in connection with the contractual execution. The

Buyer/End User will inform them about the confidential quality of the information provided and will ensure that they will keep it confidential. Hence the Buyer/End User will be responsible for ensuring that the obligations of confidentiality and non-use contained herein will be strictly observed and will assume full liability for the acts or omissions made for its personnel, representatives or agents.

15.5. The Buyer/End User will use the same standard of care, and will bind its employees, agents or contractors, if any, to such standard, to prevent disclosure of Confidential Information as the Buyer/End User uses to protect its own confidential information and trade secrets, but in no case less than reasonable care.

15.6. The Buyer/End User agrees that the Seller will suffer irreparable damage if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of the previous said and that the Seller shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such a breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.

15.7. All of Seller's Confidential Information disclosed during and/or for the purposes of contractual negotiations or contractual execution shall be and will remain Seller's property and nothing contained in these GTCS shall be interpreted as granting any rights to such Confidential Information to the Buyer and/or the End User.

15.8. Upon Seller's request, the Buyer/End User shall promptly destroy or return all information, including copies, photos, computer diskettes or other storage media information and any duplicates that the Buyer/End User has.

15.9. The Buyer's/End User's duty to hold in confidence Confidential Information that was disclosed by the Seller shall remain in effect indefinitely, unless otherwise agreed.

## **16. INTELLECTUAL PROPERTY**

16.1. All of the Seller's intellectual property, both existing or Newly-Developed, related to contractual negotiations or contractual execution, including without limitation, patents, patent applications, patentable intellectual property, patent disclosures, inventions and improvements, analytical tools, testing protocols, hardware, software, data, databases, firmware, algorithms, methodologies, trade secrets, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals,

technical data and all other Seller's proprietary information (Seller's IP) shall remain Seller's sole and exclusive property.

16.2. The Buyer/End User shall not apply for or obtain any intellectual property protection in respect of the Seller's IP. Only the Seller shall have the right to seek, apply for and obtain any or all copyrights, patents, registrations and similar protections which may be available with respect to the Seller's IP, including reissues, extensions, divisions and continuations thereof. The Buyer/End User acknowledges and agrees that the Seller's IP is Confidential Information.

16.3. Likewise, any modifications and improvements thereof by the Buyer/End User shall be the Seller's property.

16.4. The Buyer must not by itself or through third parties reverse engineer, analyze samples, modify, alter, adapt, merge, decompile, reproduce, translate, disassemble, attempt to discover the source code of the related software, or otherwise decrypt, electronically scan, create, or attempt to create derivative works out of any other IP object, without the Seller's written consent.

16.5. This clause shall apply to the Intellectual Property of third parties, which the Seller is entitled to use based on a separate contract with the respective third party.

## **17. PERSONAL DATA PROTECTION**

17.1. This Article applies when the Buyer/End User receives from or on behalf of the Seller, as part of the fulfilment of the obligations set in the Contract and/or these GTCS and/or in relation to them, Personal Data for which the Seller is responsible as a Controller, and in those circumstances the Buyer/End User is deemed to be acting on behalf of the Seller in the capacity of a Processor. The nature and purposes of the processing to be undertaken, the types of personal data, the categories of data subjects involved, and the duration of the processing should be set out in writing signed by an authorized representative of the Seller or, in the absence of such document, those required for the performance of the contractual obligations or naturally required for the development of the commercial relationship between the parties within the limits set by the applicable Data Protection Laws. The Buyer/End User shall comply with its obligations under Data Protection Laws (especially the EU General Data Protection Regulation (GDPR) - 2016/679, as amended from time to time) when processing Personal Data and shall not, by any act or omission, cause the Seller to be in breach of any Data Protection Laws.

17.2. Without limiting the Buyer's/End User's general obligations under Article 17.1., the Buyer/End User shall: (a) process any Personal Data solely for the purpose of performing the obligations under the Contract and/or these GTCS and in accordance with Seller's written instructions, unless otherwise required by law, in which case, the Buyer/End User shall (to the extent permitted by law) inform the Seller of that legal requirement before carrying out the processing; (b) take all appropriate technical and organizational measures to ensure a level of security for the Personal Data appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to the Personal Data; (c) ensure that all persons authorized to process the Personal Data shall be under obligations of confidentiality; (d) not transfer any Personal Data, or allow access to it except upon Seller's prior written consent.

17.3. All above said in Articles 17.1 and 17.2. applies mutatis mutandis when the Seller receives from or on behalf of the Buyer/End User, as part of the fulfilment of the obligations set in the Contract and/or these GTCS and/or in relation to them, Personal Data for which the Buyer/End User is responsible as a Controller, and in those circumstances, the Seller is deemed to be acting on behalf of the Buyer/End User in the capacity of a Processor.

## **18. NON COMPETE**

18.1. With respect to any composite machinery manufacturing markets or applications the Seller pursues with intellectual property that results from work product developed for the purpose of contractual negotiations or contractual execution or derivative intellectual property thereafter, the Buyer/End User agrees not to pursue, enter into, or exploit those same markets, whether alone or with any other person or entity, in any manner anywhere around the world for a period of 3 (three) years after completion of the contractual agreement between the Seller and the Buyer. In light of the access to our information to which the Buyer/End User will have access during the term of contractual negotiations or contractual execution, the Buyer/End User agrees not to use any of this information and/or intellectual property hereunder to pursue current markets that the Seller occupies for a period of 3 (three) years following completion of the contractual agreement between the Parties.

## **19. TERMINATION**

19.1. Both Parties reserve the right to terminate the Contract, totally or partially, should any of the under mentioned reasons occur.

19.2. Termination due to Seller's default:

Should the Seller, by his fault solely, fail to perform any of its obligations defined in the Contract and/or these GTCS and fail to remedy the breach within three (3) months after a written notice from the Buyer, the Buyer shall be entitled to terminate the Contract. In such case the Seller shall return the payments to the Buyer without an interest on them and shall keep the Asset.

19.3. Termination due to Buyer's default:

Should the Buyer, by his fault solely, fail to perform any of its obligations defined in the Contract and/or these GTCS and fail to remedy the breach within three (3) months after a written notice from the Seller, the Seller shall be entitled to terminate the Contract and retain all payments which are realized until the moment of termination, without any further obligations. If the Seller's costs occurred until the moment of termination of the Contract are not covered by means of the realized payments to the Seller, the Buyer will reimburse the Seller for the direct, reasonable and irreversible costs. The Seller shall issue an Invoice for such costs and the Buyer will be obliged to pay them within 10 calendar days from the date of receiving the Invoice.

## **20. ARBITRATION**

20.1. The Parties hereby agree that any dispute related to the execution of the provisions of the Contract and these GTCS shall be settled by an agreement between the Parties. In case of failure to reach an amicable solution, any dispute, disagreement or claim, arising from the Contract and/or these GTCS or related to them, the Parties shall refer the matter of dispute to the Swiss Arbitration Centre, Switzerland, for resolution in accordance with UNCITRAL.

20.2. The language of the arbitration procedure shall be the English language.

20.3. The place of jurisdiction is Geneva, Switzerland.

## **21. GENERAL CONDITIONS**

21.1. If there is any inconsistency between the Contract signed by the Parties and these GTCS, the provisions of the Contract shall apply. Any questions relating to these GTCS and/or contractual execution which are not expressly or implicitly settled by the provisions contained in the Contract and/or these GTCS, shall be governed:

21.1.1. by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980),

21.1.2. by the Incoterms 2020 rules published by the ICC,

21.1.3. to the extent that such questions are not covered by CISG, or Incoterms 2020, by reference to the law of the country where the Seller has his place of business.

21.2. Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms published by the ICC.

21.3. Any reference made to a publication of the ICC is deemed to be made to the version current at the date of conclusion of the contract.

21.4. If any provision of these GTCS and/or a contractual agreement is prohibited by law or held to be invalid, illegal, or unenforceable, the remaining provisions hereof shall not be affected, and these GTCS and/or the Contract shall continue in full force and effect as if such prohibited, illegal or invalid provision had never constituted a part hereof, with these GTCS and/or the Contract being enforced to the fullest extent possible. The Parties agree to replace such provision with a valid and enforceable provision that comes as close as possible to the economic purpose of the prohibited or ineffective provision.

21.5. These GTCS shall not be construed against the party preparing it, but shall be interpreted as if both parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against either party.

21.6. All correspondence, especially regarding these GTCS and their fulfillment and/or contractual execution, must be in English.

## **22. SELLER'S DETAILS**

### **MIKROSAM DOO Prilep**

Krusevski Pat bb

7500 Prilep

R.N. Macedonia

Tel.: + 389 (0)48 400 100

Fax.: + 389 (0)48 411 886

e-mail: [st@mikrosam.com](mailto:st@mikrosam.com)