

GTC-Delivery

MicroSys Electronics GmbH (“**MicroSys**”) sells and delivers products to customers seated outside the territory of Germany (“**Customers**”) subject to the following General Terms and Conditions of Delivery (“**GTC**”), unless MicroSys and the Customer agree from time to time otherwise based on a written offer (e.g. purchase order) and its written confirmation (“**Individual Agreement**”):

I. Subject Matter of these GTC and of the Individual Agreement

1. These GTC shall exclusively apply for all present and future Individual Agreements regarding the sale and delivery of (prototype or serial/volume) products (“**Products**”) by MicroSys to the Customer, except explicitly stated otherwise in the Individual Agreement. When purchasing Products from MicroSys, Customer understands and accepts that these Products will be manufactured by third parties, e.g. third party contract manufacturers or third-party providers of electronic manufacturing services.
2. These GTC shall not apply for any development services offered by MicroSys. These services are subject to a separate written agreement with MicroSys and MicroSys’ General Terms and Conditions for Development as a Service (“**GTC - Development as Service**”) or MicroSys’ General Terms and Conditions for success-based developments (“**GTC - Development on Success Basis**”).
3. No conflicting or other conditions, notably Customer’s general terms and conditions do apply, even where MicroSys has performed an Individual Agreement without expressly rejecting any such conditions.
4. Side letters, supplementary agreements, specifications, warranties, guarantees, representation, and other agreements between the Parties, especially those made before or after the conclusion of the Individual Agreement, shall be valid only if made in writing and if expressly incorporated or referenced in the Individual Agreement.
5. In case MicroSys offers to provide Customer various deliverables or services with different scope and separate prices (e.g. delivery of different Products, provision of development services), each offer or agreement on one of the deliverables or services deems to be a separate and independent offer or Individual Agreement, unless explicitly stated otherwise in the offer or in the Individual Agreement. The fact that an offer or Individual Agreement identifies an overall price for several or all deliverables or services shall itself not be construed as an offer of MicroSys or an agreement of the parties to conclude one single Individual Agreement on these deliverables or services that are part of the overall price.

II. Conclusion of the Individual Agreement and Scope of MicroSys’ Delivery Obligations

1. MicroSys offers are non-binding and may be subject to modifications up to its written confirmation by the Customer, unless expressly set out otherwise in MicroSys’ offer.
2. Offers issued by the Customer are binding. MicroSys is entitled to confirm any such Customer offer within two (2) weeks following its receipt.
3. The Product specification and properties (“**Specification**”) are conclusively agreed and defined in the Individual Agreement. The Customer is responsible for evaluating whether the Product is suitable for the use or application intended by the Customer or its customers; in case of customer specific products the Customer is also responsible for defining and requesting specifications and properties required for the intended use or application of the Product unless the separate written agreement between the parties on development services specifies otherwise.
4. In the period before order placement and between order confirmation and delivery, MicroSys reserves the right to change the Products, including changes to their fit, form and function, provided these changes are reasonably acceptable for Customer and the specifically agreed Specifications continue to be met.
5. MicroSys shall neither be obligated to provide a Product related documentation nor be obligated to provide or procure a Product related certification, unless expressly agreed otherwise in the Individual Agreement. In this case, the documentation or certification will be provided in English language only, unless agreed otherwise in the Individual Agreement.
6. If the Product is software or includes (embedded) software:

- (i) MicroSys shall not be obligated to provide a software related documentation or software related services (e.g. maintenance),
 - (ii) Customer is granted a non-exclusive limited license to use such software as required for the use of the Product for the purposes agreed in the Individual Agreement. To the extent that the provided software contains open-source software, the Customer shall accept any applicable open-source software license terms referenced by MicroSys. Unless permitted otherwise by mandatory applicable law or the said open-source software license terms, the Customer is not entitled to license, modify or reverse engineer the software either in parts or entirely,
 - (iii) the software will be provided solely in machine-readable form (object code), unless in the case of (i), (ii) or (iii) the Parties explicitly agree otherwise in the Individual Agreement.
7. Partial delivery and/or preliminary delivery of Products shall be permitted to the extent, they are reasonably acceptable for Customer.
8. Products agreed and delivered by MicroSys **for testing, evaluation and demonstration purposes** remain the property of MicroSys and shall be returned to MicroSys promptly following MicroSys' written request. The Customer is obliged to ensure proper storage and shall safeguard these Products against third party access and may use such Products for purposes other than testing, evaluation, and demonstration only upon a separate written agreement with MicroSys.
9. In case the ordered Products qualify as **dual use goods** (goods with a civil as well as possible military purpose) the conclusion of the Individual Agreement and/or the delivery of the respective Product by MicroSys shall be subject to an end-use certificate which the Customer has to provide at no cost. MicroSys is entitled to rescind ("zurücktreten von") the Individual Agreement if MicroSys or the Customer fails to provide said certificate or fails to comply in any other respect with applicable export control laws.
10. Customer understands that the manufacturing and testing processes applied by MicroSys' third party suppliers and contract manufacturers are typically not designed for **Products used in life endangering applications** of any kind. If Customer intends to use the Products for any such application, Customer shall inform MicroSys hereof before conclusion of the Individual Agreement. In this case the conclusion of the Individual Agreement and, in case MicroSys receives such information later, the delivery of the respective Products by MicroSys shall be subject to additional written quality agreements between Customer and MicroSys and between MicroSys and its suppliers or contract manufacturers, provided each of these agreements is addressing additional quality and testing processes to be applied by Customer and MicroSys.

III. Delivery Dates and Condition of Proper Self-Delivery

1. Product related delivery dates and delivery periods are estimates and non-binding planning dates, unless explicitly agreed otherwise in the Individual Agreement.
2. If a binding delivery date is agreed in the Individual Agreement and is determined in days, a delivery window of +/- three (3) working days shall be deemed agreed. If the delivery date is determined by weeks, delivery on the last working day of the relevant week shall suffice.
3. Adherence to binding delivery dates or delivery periods shall be subject to the timely receipt of all documents, approvals, and clearances as well as compliance with the agreed payment terms and any other obligation by the Customer. If these conditions are not fulfilled in time, the delivery dates and periods will be extended accordingly, unless and to the extent MicroSys is responsible for the delay.
4. A delivery date or delivery period is met if the Customer has been informed of readiness for dispatch for the carrier.
5. MicroSys' obligation to deliver, specifically to meet binding delivery dates and delivery periods, is furthermore subject to the condition that MicroSys receives all necessary subsupplies in accordance with the respective subsupplier or contract manufacturer agreements concluded by MicroSys (with regard to delivery dates, quantities, quality, or originality). If MicroSys itself is not supplied in accordance with these subsupplier or contract manufacturer agreements (with regard to delivery dates, quantities, quality, or originality), MicroSys shall be entitled to rescind ("zurücktreten von") the Individual Agreement with the Customer, provided that
 - (i) MicroSys has informed the Customer in time of the delayed or failed self-delivery in writing, and

- (ii) MicroSys itself is not responsible for the delayed or failed self-supply. Lack of responsibility requires that MicroSys is able to document, upon the Customer's written request, to have procurement agreements in place with its suppliers and contract manufacturers that are sufficient for meeting MicroSys' delivery obligations towards the Customer, and to have applied reasonable efforts to procure the Products or its components elsewhere at reasonable prices and that such efforts have failed.

The rescission must be declared by MicroSys in writing.

- 6. In case MicroSys fails to meet binding delivery dates or delivery periods, the Customer shall be required to grant MicroSys a reasonable grace period in writing. Only if MicroSys fails to meet such grace period, the Customer is entitled to rescind ("zurücktreten von") the Individual Agreement that is affected by the delay. The rescission must be declared by the Customer in writing.
- 7. In case of binding delivery dates or delivery periods and in case MicroSys is responsible for the non- or delayed delivery, the Customer may claim from MicroSys liquidated damages for each full week of the delay (starting from the end date of the above mentioned grace period) of 0.5%, but not more than a total of 5% of the price for that part of the Product deliveries which are affected by the delay or non-delivery. Exceeding claims of the Customer for damages due to delay in delivery or non-delivery shall be excluded. This exclusion shall, however, not apply in case the delay or non-delivery is due to MicroSys' intent or gross negligence. A claim for liquidated damages requires that the Customer evidence to have incurred damages due to the delay or non-delivery. MicroSys shall have the right to evidence lower damages.
- 8. The Customer may not refuse receipt of delivered Products for suspected or minor defects. If receipt is refused without cause or delivery is delayed upon request of the Customer by more than one month after notification that the products are ready for dispatch, the Customer shall pay to MicroSys a storage fee in the amount of 1 % of the price of the Products for each month commenced. Either party have the right to evidence higher or lower storage costs.

IV. Prices and Terms of Payment

- 1. Unless explicitly agreed otherwise in the Individual Agreement, all prices are FCA (Incoterms 2020), in Euro and are net prices. Any applicable value added tax will be charged additionally in the amount applicable at the time of invoicing.
- 2. Freight, packaging, and insurance shall be borne by the Customer.
- 3. At MicroSys' request Customer will support MicroSys in obtaining an insurance covering all payment claims MicroSys may have against the Customer. MicroSys may select the credit insurance company. Products not insured shall be delivered at Customer's option against advance payment or against the provision of adequate security.
- 4. Insofar MicroSys does not deliver against payment in advance, invoices are due and payable by bank transfer without any deductions within 30 days following the delivery of the products and receipt of a corresponding invoice (payment by credit card or cheque is not accepted). The invoice will be issued by MicroSys simultaneously with the delivery of the Products.
- 5. Price increase due to unforeseeable increase of costs incurred by MicroSys or its suppliers or contract manufacturers for fulfilling the Individual Agreement shall be permitted if there are more than six weeks between the conclusion of the Individual Agreement and the agreed delivery date.
- 6. The Customer may assert a right of retention against claims of MicroSys and may make a set off only if and to the extent that it is counterclaim(s) arises from the same contractual relationship and is/are either undisputed by MicroSys or finally awarded by a competent court.

V. Passing of Risk and Retention of Title

- 1. Delivery of Products shall be made at the risk of the Customer, unless otherwise agreed. The risk shall pass to the Customer upon delivery.
- 2. MicroSys retains the title to the Products until all claims against the Customer arising from the respective Individual Agreement are fully settled.

VI. Limited Warranty

1. MicroSys warrants that the Products, at the time of the passing of risk (Section V. of these GTC), are free from any defects, if defects are limited to any incompliance of the Product with
 - (i) the agreed Specification, and
 - (ii) with the requirements of the European Union (EU) Regulation 1907/2006/EC (REACH) and the RoHS-Directive (2011/65/EU). The RoHS conformity of the components used is based on the information provided by the respective manufacturers and suppliers.

Notwithstanding the above, MicroSys' warranty with regard to prototypes is limited to their suitability for determining which specification needs to be improved or changed/which defects need to be remedied prior to the start of series production.

Apart from this and to the extent permitted by governing law, MicroSys disclaims all other warranties and indemnities, express, implied, or statutory, including any warranty regarding the product's suitability for any intended purpose. If and to the extent MicroSys has contributed to the development and design of the Product, the Customer understands and accepts that MicroSys' warranty for any defects in development and design is exclusively governed by the terms of the separate agreement on development services. In exceptional cases and due to lack of availability of individual components, the use of non-RoHS-compliant versions may be necessary. Prior approval by the customer is required for this.

2. The warranty period for the limited warranty granted above shall be limited to 12 months following receipt of the Product.
3. The Customer is obliged to inspect all Products for defects immediately upon receipt, unless agreed otherwise (e.g. in any separate written quality agreement). Defects must be notified to MicroSys immediately, but no later than two weeks after receipt of the Products or after its detection in case the defect was not detectable during the incoming inspection. If no notification of defects is received in time, the Products are deemed to be free from defects, and the Customer shall have no related warranty claims. Notifications of defects must be made by the Customer in writing and shall contain a detailed description of the defect.
4. The sole obligation of MicroSys for defective Products is limited to the repair and/or the replacement (at MicroSys' option) of the defective Product at no cost, upon prior return authorization issued by MicroSys. MicroSys shall bear the related costs of shipment, but no dismantling or mounting costs that may be incurred by Customer. Nothing herein shall extend the initial warranty period of any Product or Product component that has either been repaired or replaced by MicroSys. The remedy set forth (repair and/or replacement) is the sole and exclusive remedy for Customer's warranty claims and is expressly in lieu of all other remedies that may be available to the Customer under governing law unless the defect is due to MicroSys' false representation.

VII. Limitation of Liability

1. Insofar as Sect. III. 7 of these GTC does not provide otherwise for delay in delivery or non-delivery, MicroSys is liable to the Customer in connection with the sale and delivery of Products exclusively in accordance with the following regulations of this Section VII, irrespective of the legal basis for such liability.
2. MicroSys is liable to the Customer in accordance with governing law
 - (a) for damages caused by MicroSys intentionally or grossly negligently, and
 - (b) for damages resulting from injury to life, body, or health for which MicroSys is responsible.
3. MicroSys liability for slight or normal negligence shall be limited to the net price paid or payable by the Customer for the respective Product that is causing the damage.
4. MicroSys is prepared to take out a Customer specific insurance at the request of the Customer, provided that the Customer bears the associated costs, and the scope of the coverage is mutually agreed upon between the parties.

VIII. Intellectual Property Rights

1. MicroSys shall remain the owner of all intellectual and industrial property rights vested in or relating to the Products unless the separate agreement on the development services specifies otherwise in writing.
2. In case a third-party asserts claims against the Customer that a Product infringes any copyright worldwide or any other industrial or intellectual property rights existing in the European Economic Area, Switzerland, and UK, MicroSys shall be liable as follows: MicroSys shall, at its option and cost, either
 - (i) acquire a right of use for the affected Product, or
 - (ii) modify the affected Product in such a way that the copyright or industrial or intellectual property right is no longer infringing, or replace the Product by an equivalent not infringing product, or
 - (iii) terminate the affected Individual Agreement against refund of the Product price less a reasonable depreciation.The remedies above are always subject to the condition that Customer
 - (i) has notified MicroSys about the asserted claim(s) immediately in writing and
 - (ii) has not acknowledged the third-party claim.
3. Claims of the Customer shall be excluded
 - (i) three (3) years after delivery of the respective Product,
 - (ii) if the Customer is responsible for the infringement of industrial or intellectual property rights,
 - (iii) if the infringement is caused by specific requirements of the Customer, or
 - (iv) if the infringement is due to changes on the part of the Customer, due to the combination with Products not delivered by MicroSys or due to Customer's specific use of the Products but not the Product itself.
4. Except as provided above, MicroSys disclaims all warranties and indemnities, express, implied, or statutory, as far as permitted by law. The remedies set forth above in Section VIII. 2. above are the sole and exclusive remedies in case of the infringement of third party industrial or intellectual property rights and apply expressly in lieu of all other remedies that may be available to the Customer according to governing law unless the infringement is due to MicroSys gross negligence or willful misconduct.

IX. Miscellaneous

1. Written form means any documents signed by a Party including emails sent and/or received.
2. The legal relationship between MicroSys and the Customer and each Individual Agreement, including all matters regarding its conclusion or termination, shall be governed exclusively by the substantive laws in force in Switzerland, to the exclusion of its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Products (CISG).
3. The place of performance for all delivery and payment obligations shall be the registered office of MicroSys.
4. Munich, Germany, is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship and each Individual Agreement. However, MicroSys is entitled to take action against the Customer at any other place of jurisdiction available under applicable law.
5. If any provision of these GTC should be or become invalid or unenforceable, this shall not affect the effectiveness of the remaining provisions.

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