

Terms and Conditions of Microtech Gefell GmbH with Consumer Revocation Policy as of 1 March 2008

General, Definition of Terms

1. These General Terms and Conditions (as amended) shall apply to any kind of business relations between Microtech Gefell GmbH and its Contractual Partners / Customers.

Any deviating Terms and Conditions or any general or particular terms and conditions of Contractual Partners / Customers of Microtech Gefell GmbH shall require express written agreement to become effective.

2. The German text of a contract, or the German translation of a contract existing in any other language, shall be decisive.
3. In the event that Microtech Gefell GmbH agrees to accept in addition the application of the **INCOTERMS** issued by the International Chamber of Commerce in Paris (ICC) or individual provisions of INCOTERMS in contracts with foreign Contractual Partners / Customers, then such agreements are exclusively related to INCOTERMS 2000, and the German version or the German translation shall be decisive.
4. All **Offers** shall only be binding for Microtech Gefell GmbH if confirmed by an order confirmation of Microtech Gefell GmbH sent by mail, fax or e-mail, or the goods have been dispatched and/or an invoice has been issued.
5. Microtech Gefell GmbH reserves the right to extend any agreed delivery periods for a reasonable period of time, in particular in cases of Force Majeure or unforeseeable obstacles or any other events for which Microtech Gefell GmbH cannot be blamed.
6. The term 'Consumers' shall only apply to those defined in Section 13 of the German Civil Code (BGB). Any other Contractual Partners / Customers shall not be deemed Consumers.
7. Consumers shall clearly identify as such towards Microtech Gefell GmbH before concluding any agreement.

Delivery, Price

8. Scope and type of delivery as well as the price shall be fixed in the sales contract and/or the order confirmation. In cases of doubt, the order confirmation of Microtech Gefell GmbH shall apply.
9. Delivery shall be carried out at the Contractual Partner's / Customer's **risk**.
10. The risk shall pass to the Contractual Partner / Customer of Microtech Gefell GmbH with the notification sent to the Contractual Partner / Customer informing the latter that the goods are ready for dispatch at Microtech Gefell GmbH, at the latest with the handing over of the goods to the companies or persons charged with the transport of the goods, including employees of Microtech Gefell GmbH charged with the transport. This shall also apply to partial deliveries. Section 447 of the German Civil Code (BGB) shall remain applicable to German Customers.
11. The Contractual Partner / Customer shall also bear the risk of accidental loss or accidental deterioration of the goods sold, if it is in default with regard to acceptance of the goods.
12. Any prices, e.g. as published in price lists, shall be net cash prices. Mandatory **VAT**, any **packaging** and **transportation costs** as well as any **collection costs** such as **cash-at-delivery costs** and **banking fees**, shall be added to this.
13. In the event that mandatory taxes, in particular VAT, are increased, Microtech Gefell GmbH shall be entitled to charge its Contractual Partner / Customer with the differential amount even if such increase in mandatory taxes occurs between the signing of the contract and delivery of the goods and the increased taxes are levied by or have to be transferred to the tax office and had not been considered in the prices agreed.
14. Any details concerning **delivery periods** shall not be binding unless a certain delivery period has been agreed in writing. Microtech Gefell GmbH shall also be entitled to deliver the goods earlier than agreed.

Warranty, Claims for Defects

15. The Contractual Partner / Customer of Microtech Gefell GmbH shall **check** the goods delivered **without delay** for any damage or defects. If any defects, incorrect deliveries or quantities are detected during such check, the Contractual Partner / Customer shall **without delay** sent a **written notification** to Microtech Gefell GmbH detailing the defects with sufficient accuracy.
16. If the Contractual Partner / Customer fails to send such notification, the goods or services shall be deemed approved, unless the defect was such that it could not be detected during the check, or constitutes such

a considerable deviation of the delivered item or service or delivered quantity from the Purchase Order, so that Microtech Gefell GmbH had to assume that the Contractual Partner / Customer would not approve the delivery.

17. If such a defect appears at a later point of time, the Contractual Partner / Customer shall send the written notification immediately after the discovery of the defect; otherwise the goods shall be deemed approved under the Contract notwithstanding the defect.
18. The obligations concerning immediate check of the goods and immediate written defect notification shall also apply in cases of rectification of defects or repair by Microtech Gefell GmbH. If Contractual Partner / Customer fails to notify the defects, the goods or services shall be deemed approved under the Contract.
19. If Contractual Partner / Customer accepts the goods or the commissioned item although being aware of a defect, any warranty claims shall only be valid if Contractual Partner / Customer expressly and in writing reserves the right to claim defects immediately after the receipt of the goods.
20. The **Warranty Period** in relation to all Contractual Partners / Customers shall be two years for new items, one year for second-hand items, in each case starting at the time of passage of risk (e.g. at the time of handover of the goods to the forwarding company etc.).
21. Any defects or damage caused by negligent or **improper treatment** or incorrect installation or non-compliance with the interface specifications given by Microtech Gefell GmbH or the technical conditions specified on the relevant data sheets, or the use of inappropriate accessories or any modification of the original parts by the Contractual Partner / Customer, or by any third parties not commissioned by Microtech Gefell GmbH, shall **not be covered by the warranty**. Natural **wear and tear** shall also be excluded from warranty.
22. Microtech Gefell GmbH may request to examine any defects/damage claimed on Contractual Partner's / Customer's premises. Microtech Gefell GmbH may also require Contractual Partner / Customer to send any items claimed to be defective/damaged, incorrect or faulty, back to Microtech Gefell GmbH for inspection and possible rectification/repair.

Reservation of Title, Contractor's Lien

23. Microtech Gefell GmbH shall remain the owner of the goods delivered until all payments due, including the purchase price and any ancillary claims, have been fully paid by Contractual Partner / Customer.
24. Unless the purchase price has been fully paid, Contractual Partner / Customer shall not be entitled to sell the goods to any third parties or take any measures/actions endangering the ownership of Microtech Gefell GmbH.
25. Any Contractual Partners / Customers that are contractors in the sense of Section 14 of the German Civil Code (BGB), shall be entitled to sell goods not yet fully paid in the normal course of business **provided that** they, as re-sellers, receive immediate cash payment from their customers. Any claims with regard to such payments shall be deemed assigned to Microtech Gefell GmbH.

In case the Contractual Partner / Customer of Microtech Gefell GmbH sells the goods by methods other than against immediate cash payment, it shall oblige its customer to submit to this reservation of title. In such case, Contractual Partner / Customer already now assigns any claims against its customer from the re-sale of the reserved goods to Microtech Gefell GmbH at an amount equalling the outstanding payments to Microtech Gefell GmbH, without the need of an express declaration of assignment for each individual sale.
26. Microtech Gefell GmbH shall have a right of lien with regard to its claims towards Contractual Partner concerning the movable chattels of Contractual Partner manufactured or repaired by Microtech Gefell GmbH, if such items come into the possession of Microtech Gefell GmbH during manufacture or repair (e.g. in connection with repair orders).

Due Payments, Terms of Payment

27. Deliveries to consumers shall be performed against advance payment, through cash-on-delivery or against any other security to be agreed separately in individual cases.
28. Any invoices issued by Microtech Gefell GmbH shall be paid **without delay** and **without any deductions** unless agreed otherwise in writing.

29. If Contractual Partner / Customer is in default with regard to the payment of the purchase price, the purchase price shall be subject to interest payment in accordance with Section 247 of the German Civil Code (BGB) at a rate of five percentage points above the respective base rate in the case of consumers, and of eight percentage points for legal transactions where consumers are not involved (Section 247 of the German Civil Code).
If Microtech Gefell GmbH can prove that the damage caused by the default was greater, it can claim reimbursement for such greater damage from Contractual Partner / Customer.

Liability, Disclaimer

30. Microtech Gefell GmbH shall be liable for intent or gross negligence in accordance with the legal regulations.
31. In cases of slight negligence, Microtech Gefell GmbH shall not be liable unless an essential contractual duty (cardinal duty) has been violated or any damage to a person's life, body or health has occurred.
32. In cases of slight negligence, Microtech Gefell GmbH shall not be liable unless an essential contractual duty (cardinal duty) has been violated in connection with foreseeable damage which typically has to be expected. This limitation of liability shall not apply if any damage to a person's life, body or health has occurred.
33. In the case of damage to property, the person suffering the damage shall bear the costs up to an amount of EUR 500.00 (deductible).
34. In the case of any liability under the Act on Liability for Defective Products (Product Liability Act), the legal regulations shall apply.

Governing Law, Place of Performance, Place of Jurisdiction

35. The legal relations resulting from the contractual relationship including its Terms and Conditions and any litigation between Microtech Gefell

GmbH and the respective Contractual Partner / Customer shall exclusively be governed by German law.

36. The place of performance for any services derived from the business relations with Microtech Gefell GmbH shall be 07926 Gefell (near Schleiz) in Thuringia, Germany.
37. The exclusive place of jurisdiction for any litigation (lawsuits initiated by or against Microtech Gefell GmbH) resulting from the contractual relationship including its Terms and Conditions shall be the competent court for 07926 Gefell (near Schleiz) in Thuringia, Germany, to the extent permitted by law (currently Pößneck local court, Bad Lobenstein branch, or the Gera regional court).
38. The exclusive place of jurisdiction for any litigation (lawsuits initiated by Microtech Gefell GmbH against foreign Contractual Partners / Customers or by foreign Contractual Partners / Customers against Microtech Gefell GmbH), resulting from the legal relations in connection with the contractual relationship including its Terms and Conditions, shall be 07926 Gefell (near Schleiz) in Thuringia, Germany (currently Pößneck local court, Bad Lobenstein branch, or the Gera regional court).
39. The Contractual Partner / Customer losing the lawsuit against Microtech Gefell GmbH shall reimburse Microtech Gefell GmbH for any litigation costs incurred.

Final Provisions, Data Protection

40. Should any of the above provisions be or become ineffective, the effectiveness of the remaining provisions shall remain unaffected. The ineffective provisions shall be replaced by provisions coming closest to the commercial purpose of the Contract.
41. Any data collected or required in connection with the Purchase Order concerning the Contractual Partner / Customer of Microtech Gefell GmbH shall be stored and processed in data processing facilities for the purposes of contract performance or handling of the transaction, taking into account the legal data protection regulations.

Important: Right of Return / Revocation in the case of Distance Selling Contracts with Consumers

(Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on Consumer Protection for Distance Selling Contracts, EU Gazette No. L 144, p. 19)

42. Contractual Partners / Customers of Microtech Gefell GmbH that are Consumers in the sense of Section 312 b of the German Civil Code shall have a **Right of Revocation** in the sense of Sections 312d, 355 of the German Civil Code, that has to be declared (without giving any reasons) in text form (e.g. by letter, fax, e-mail) or by returning the goods within **two weeks**. The period of revocation begins at the earliest with the receipt of these Terms of Revocation and, in the case of the delivery of goods, with the receipt of the goods by recipient. Revocation shall be considered timely if the declaration of revocation / the goods are dispatched within the period of revocation. The declaration of revocation shall be sent to Microtech Gefell GmbH, Georg Neumann Platz, 07926 Gefell.
In the case of goods delivery, the right of return specified in Clause 43 shall apply.
43. To the extent that Contractual Partner / Customer is a Consumer he/she shall have, in the case of a Sales Contract in the form of a Distance Selling Contract in the sense of Section 312 b of the German Civil Code about the **Delivery of Goods**, a **Right of Return** in accordance with Sections 312 d, 356 of the German Civil Code instead of the **Right of Revocation**. The Consumer shall exercise this right by returning the goods within **two weeks**. The period of return shall begin with the receipt of the Terms of Revocation or the goods by recipient. Return of the goods shall be considered timely if dispatched to Microtech Gefell GmbH, Georg Neumann Platz, 07926 Gefell within the specified return period.
44. A right of return or revocation shall not exist in the case of distance selling contracts
- for the **delivery of goods** manufactured on the basis of the Contractual Partner's / Customer's specifications or specifically designed for their personal needs or for goods that are not suitable for return due to their specific characteristics,
 - for the **delivery of audio or video recordings** or software, if the data carriers have been unsealed by the Consumer,
 - that have been concluded in the form of **auctions** (Section 156 of the German Civil Code).

the express permission of the Contractual Partner / Customer before the end of the revocation period, or if the Contractual Partner / Customer has itself commissioned the work.

45. In the event of an effective revocation either party shall be obliged to return any performance received and compensate the other for any benefits derived (e.g. amenity of use, interest). If the Consumer is unable, in whole or in part, to return the goods received, or only able to return them in deteriorated condition, he/she shall be obliged to provide compensation for the loss in value. This shall not apply if the deteriorated condition of the goods is attributable to testing as it might have been performed by Consumer (Contractual Partner / Customer) at a retail shop. Consumers (Contractual Partners / Customers) can avoid the obligation to provide compensation for the loss in value by not taking the goods into use as if they were their own and by refraining from any action which would impair their value. Goods suitable for parcel shipment shall be returned at the risk and cost of Microtech Gefell GmbH, after prior agreement between Consumer and Microtech Gefell GmbH as to the type and cost of dispatch. Goods not suitable for parcel shipment shall be collected from Consumer's (Contractual Partner's / Customer's) address. Consumers (Contractual Partners / Customers) shall fulfil their payment reimbursement obligations within 30 days after dispatch of their declaration of revocation.

Microtech Gefell GmbH

In the case of revival of Consumer's right of revocation, or if Consumer's right of return is not applicable for other reasons, the right of revocation shall also be forfeited in case of a **service** if Microtech Gefell GmbH has already started with the execution of the service with