

General terms and conditions

AFT microwave GmbH, Donaustrasse 18, 71522 Backnang, Germany



1. General

- 1.1. All business by and with AFT microwave GmbH, hereinafter called "Supplier" and the customer, herein called "Purchaser" is governed by the following terms of deliveries unless otherwise stated in the confirmation of the order. Any amendments or supplements to the terms are binding only in so far as they have been indicated or confirmed expressly in writing by the Supplier.
- 1.2. Offers expire two months after the date of the offer unless otherwise mutually agreed in writing.
- 1.3. Offers are valid for the country in which the Purchaser is based. The Purchaser is liable for all prejudice to and claims against the Supplier due to the use of the products supplied outside said country.
- 1.4. Any standard terms and conditions of the Purchaser shall not be binding, even if the Supplier has not expressly rejected them. The Purchaser's terms and conditions shall apply only if accepted by the Supplier in writing. The scope of delivery shall then be defined by a congruent mutual written agreement.
- 1.5. Unless otherwise agreed, interpretation of contract terms shall be governed by the Incoterms in their current version including the supplements valid at the time when the contract is concluded.

2. Scope of delivery and prices

- 2.1. The delivery may comprise products (hard-, and software) and services, hereinafter called "Products" confirmed in writing by the Supplier. If the products are suitable for specific purposes of the Purchaser only, such specific purposes, and the requirements with which the products to be supplied must comply, must be informed fully and expressly by the Purchaser prior to the order and confirmed in writing by the Supplier.
- 2.2. The Purchaser must use Supplier's standard software and firmware on Supplier's hardware. It may not be changed and/ or re-programmed and must be used within the agreed parameters, and on the agreed hardware (equipment).
- 2.3. Unless otherwise agreed in writing and confirmed by Supplier and Purchaser, prices are calculated net and Free Carrier (FCA) at Supplier's factory Backnang, Germany.
- 2.4. Customs duties, consular fees and other taxes, dues or fees charged in accordance with any law and regulation outside the jurisdiction of the Federal Republic of Germany, as well as any cost related therewith, shall be borne by the Purchaser. For delivery including customs or other duties, the price quoted is based on the exchange rate as of the date of the offer/ tendering. The actual expenses will finally be charged. If applicable, a sales revenue tax is charged separately.
- 2.5. The Supplier shall comply with any packing, weight, and customs regulation if information has been received from the Purchaser by the Supplier in advance. Any additional expenses therewith shall be borne by the Purchaser.
- 2.6. In the case of fluctuations of the exchange rate, the Supplier is entitled to apply the exchange rate used for the offer.

3. Information, drawings, and other documents

- 3.1. All information concerning weight and dimension, drawings, explanations, descriptions, and illustrations among others submitted by the Supplier must be considered as approximate. All necessary drawings and other documents containing final data will be supplied in reasonable quantities upon request and after conclusion of the contract. The Supplier shall reserve the right to alter the technical concept, in so far as the performance and quality of the product offered for supply are not thereby affected.
- 3.2. The Supplier shall retain the exclusive ownership and all copyrights in respect of any drawings and other documents. Drawings and other documents shall not be made accessible to third parties without the Supplier's written consent and shall be returned if requested.

4. Terms of payment

- 4.1. The payment term is mentioned in the offer. If no payment term is specified, the payment is due net within 30 calendar days from the invoice date. The purchaser may not withhold any payment owed or set off contractually owed amounts against disputed claims. All payments shall be made in accordance with the stipulations entered, without any deduction and free of charge to the address of payment notified by the Supplier.
- 4.2. If the Supplier becomes aware of facts negatively impacting the creditworthiness of the Purchaser after the contract came into force, the Supplier shall be entitled to demand payment in advance or an appropriate security and in the event of refusal to rescind the contract.
- 4.3. If a transfer of payments from the country from which payment must be made is impossible at the due date, the Purchaser shall pay the equivalent of the amount owed into a bank in the said country within the stipulated time. In case of depreciation in the exchange rate for amounts paid in a currency not agreed upon, the Purchaser shall compensate such differences with additional payments immediately.
- 4.4. In the event of delivery being delayed without fault of the Supplier, payments must be made as if no delay had occurred.
- 4.5. The Purchaser shall be in default if the due date of payment agreed is exceeded. In the case of delayed payment, the Supplier may, without prejudice to any other claim, demand interest at the annual rate of 12 % on the amount outstanding as from the due date of the agreed payment.
- 4.6. Compliance with all obligations of the Supplier towards the Purchaser shall be subject to the terms of payment agreed upon and with all other obligations of the Purchaser towards the Supplier.
- 4.7. The Purchaser may only set off claims or assert retention rights in respect of claims which are undisputed or have been finally decided. The right of retention may only be claimed to a reasonable extent.
- 4.8. In case the Purchaser is responsible to pick up the products at the Supplier's site and fails to do so within 14 calendar days, the Supplier reserves the right to charge storage costs of 90 Euro per week per storage slot. At least one storage slot as minimum is considered for charging.

5. Reservation of ownership

The products supplied shall, unless otherwise agreed, remain the property of the Supplier until all debts owing to the Supplier or those subsequently arising from the business with the Purchaser have been paid in full. With respect to the case of re-sales of the products - in any condition whatsoever - the Purchaser agrees to assign to the Supplier by way of security, when the contract comes into force and is effective up to the payment of all debts from the Purchaser to the Supplier, any claims against the Purchaser's customers which may have arisen or will arise in future from resale, and undertakes to notify the Supplier on request of the names of third-party debtors and of the amount of the debts owing by these to the Purchaser. If the Purchaser complies with the payment obligation and no change occurs in the Purchaser's financial standing, the Supplier shall not collect the debts assigned. If the reservation of ownership in the foregoing form is not effective under the law of the country of the Purchaser, the Purchaser shall cooperate in establishing a similar security right complying with the provisions in the Purchaser's country in favor of the Supplier.

6. Time of delivery and default

- 6.1. Unless otherwise agreed in writing, any indicated delivery date shall be non-binding. Adherence to the indicated delivery time shall be subject to the order being completely clarified, all permits being granted and all the documents, payments, and securities to be submitted by the Purchaser being received by the Supplier in due time. The delivery time shall be reasonably extended if any of the foregoing requirements have not been complied in due time. The delivery time has been adhered to if the consignment is ready for dispatch ex works within the period agreed upon and if a notice to that effect has been sent to the Purchaser.
- 6.2. Performance obstacles due to force majeure which temporarily or permanently impacts the fulfillment of the contract or unreasonably difficult the Supplier to fulfil the contract shall release the Supplier from this obligation for the duration and to the extent of the obstacle as well as for the subsequent period required to remove the obstacle. Force majeure includes strikes and lockouts (including internal and lawful ones), technical breakdowns at other operators of telecommunication systems, telecommunication transmission paths or telecommunication networks, power supply breakdowns, plagues (including epidemics and pandemics), fire, natural disasters, war and warlike events, terrorist attacks, blockades, acts of violence by third parties, the misuse of services of the Supplier, the unauthorized access of third parties to the software or hardware of the Supplier ("hacking"), the occurrence of computer viruses, administrative orders and directives, and the sudden death or sudden serious illness of employees of the Supplier to the extent that they cannot be replaced by a third party in a timely manner from an objective point of view, further hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade laws or to other circumstances for which Supplier is not responsible, and the fact the Supplier does not receive its own supplies in due time and/ or in due form.
- 6.3. If any agreed delivery time is exceeded and there is no incident referred to in subsection 6.2 above, then the Purchaser must specify the Supplier a reasonable cure period of minimum eight weeks. If Supplier fails to meet this deadline also, the Purchaser shall have the right to cancel the contract but shall have no right to seek compensation for breach of contract or default unless in cases of willful misconduct or gross negligence on part of the Supplier. The Supplier shall never owe a contractual penalty for delays in delivery.
- 6.4. The Purchaser shall bear any additional cost resulting from interruption or delay caused by him in the work to be performed by the Supplier.
- 6.5. In the event of dispatch being delayed for reasons beyond the Supplier's control, the Supplier shall be entitled to store the products to be supplied at Purchaser's risk and to demand reimbursement of any expenses incurred. The Supplier shall be entitled to take out at the Purchaser's expense an insurance against storage risks.
- 6.6. Supplier shall be entitled to make partial deliveries which Supplier may invoice immediately if the partial delivery can be used by the Purchaser within the scope of the intended purpose as agreed in the contract, the delivery of the remaining ordered products is guaranteed, and the Purchaser incurs no considerable additional expenses as a result. Any arrangements concerning discounts shall remain unaffected.
- 6.7. At all times, Supplier shall have the right to supply 10% more or less than the agreed amount/quantity. Such over-/under deliveries will be considered for invoicing.

7. Testing and acceptance

- 7.1. Any product tests and content hereto must be agreed in advance and in writing between Purchaser and Supplier for consideration in Supplier's offer.
- 7.2. Product tests in the presence of the Purchaser or representatives as well as any special tests must be agreed in advance. The Supplier shall be entitled to charge the cost of such tests to the Purchaser.
- 7.3. If any acceptance test of the products to be supplied is stipulated, this shall be carried out at the premises of the Supplier. Acceptance has taken place if the Purchaser has not raised any justified complaints at the time that the test has been completed.

- 7.4. If the Purchaser waives any acceptance test agreed upon, or if he fails to be present at such test despite having been invited in due time, the test carried out by the Supplier shall be regarded as accepted.
- 7.5. In the event of tests being delayed for reasons beyond the Supplier's control, any additional expenses resulting therefrom shall be borne by the Purchaser.

8. Transfer of risk - liability

- 8.1. The product related risk is transferred from the Supplier to the Purchaser according to the agreed Incoterms in their current version. In general, the Incoterm FCA (Free Carrier) applies, hence the risk is transferred from the Supplier to the Purchaser as soon as the products to be supplied leave the premises of the Supplier. Should dispatch be delayed for reasons beyond the Supplier's control, the risk is transferred to the Purchaser upon notification of readiness for dispatch.
- 8.2. In case of intent or gross negligence on part of the Supplier, the Supplier shall be liable according to the provisions of the German applicable law; Supplier's liability for culpable damage to life, body or health as well as the liability under the Product Liability Act and the liability due to a guarantee given by the Supplier shall remain unaffected. Any liability not expressly provided for above shall be disclaimed. The foregoing exclusions and limitations of liability shall apply mutatis mutandis to the same extent in favor of legal representatives, employees and other vicarious agents of the Supplier.

9. Warranty and repairs

- 9.1. Precondition for any warranty claim of the Purchaser is the Purchaser's full compliance with all requirements regarding inspection and objection established by sec. 377 HGB (German Commercial Code).
- 9.2. The warranty period is 12 months after the transfer of risk of the product according to the applicable and agreed Incoterm, unless otherwise agreed in writing between Supplier and Purchaser.
- 9.3. It is important that the Purchaser follows Supplier's installation information, product, and system manuals, further operating and safety instructions, and other documentation and specifications provided by the Supplier. Liability of the Supplier, including the warranty liability, is excluded if the Purchaser does not fulfill this obligation.
- 9.4. For any defects in the products supplied, including the absence of promised characteristics, the Supplier shall be liable to repair or replace all parts in which defects are proved to have arisen from any circumstance occurring prior to the transfer of risk, in particular parts which are unusable due to faulty construction, inferior material or defective execution, or the usefulness of which is considerably impaired, within twelve months from the date of transfer of risk, without regard to the duration of operation. The ascertainment of such defects must be made known to the Supplier in writing without delay.
- 9.5. To remedy the defects, the Purchaser shall allow the Supplier the time and measure required according to the reasonable estimation of the Supplier. Should the Purchaser refuse to allow such time and measure, the Supplier shall be released from the obligation to remedy the defect. If the contract is part of the trade or business of the Purchaser, the following stipulations shall apply:
The Purchaser shall return the defective product at Purchaser's expense to the Supplier immediately upon request of the latter. However, the purchaser is only allowed to return goods after a prior written authorization. The Supplier shall bear the costs for repair or deliver replacements ex works. If the repair work is carried out at the place of destination, the Supplier shall only bear such expenses as would have arisen if the repair had been carried out at Supplier's facility. In this case the Purchaser shall make available the necessary assistant personnel and any appliances required at Purchaser's expense. If a cost estimate is requested before repairs are carried out, this must be expressly requested. The Supplier reserves the right to charge a fee for the inspection of the product whether the repair is ordered by the Purchaser or not. Whether repairs are carried out in its own workshop or by a third party lies in the discretion of the Supplier. The costs of freight and packaging shall be borne by the Purchaser. The delivery of repaired equipment shall be made only against immediate payment.
- 9.6. Should the repair or replacement fail to remedy the defect, the Purchaser is entitled to claim the right of abatement (reduction of purchase price). Should the Purchaser and the Supplier fail to reach an agreement upon the abatement, the Purchaser may also demand rescission (rescission of the contract).
- 9.7. The right of the Purchaser to bring actions arising out of defects shall in all cases be barred by the Statute of Limitations for a period of six months after the date of the duly raised notification of defect. Should no agreement be reached within this period, the Supplier and the Purchaser may arrange an extension of the period.
- 9.8. The warranty obligation does not refer to natural wear and tear nor to damage occurring after the transfer of risk due to improper or unsuitable handling, excessive stressing, unsuitable operation material, faulty construction work, unsuitable foundations and chemical, electrochemical, or electrical influences of a nature not provided for according to the contract. On improper alteration or repair carried out by the Purchaser or third parties or in case of breaking of seals, the warranty obligations of the Supplier and liability for consequences caused thereby are rendered void.
- 9.9. Further claims of the Purchaser against the Supplier are excluded for the liability for damages not arising to the object of supply itself and the liability for consequential damages, among others for loss of profit or loss of production. This does not apply if compulsory liability is prescribed for legal reasons in cases of premeditated malice or gross negligence or in case of absence of promised characteristics.

10. Rescission

- 10.1. The Supplier shall be entitled to rescind the contract if the fulfillment of the same becomes impossible for reasons for which the Supplier is not liable. The Supplier is further entitled to rescind the contract if the conditions of the contract are altered later by circumstances which could not be foreseen at the conclusion of the contract that the Supplier can no longer be reasonably expected to fulfill the contract.
- 10.2. The Supplier can in the before mentioned cases demand from the Purchaser reimbursement for all the expenses in connection with the contract, unless part manufactured under the contract can be used elsewhere within a reasonable time or unless the impossibility of fulfilling the contract is due to any intervention by Governmental Authorities.

11. Patent rights and other industrial rights

The Supplier is liable to the Purchaser for the infringement of patent rights and other industrial rights (hereinafter collectively referred to as "patent and other industrial rights") of third parties only within the limits of the following provisions. Compliance with this obligation is subject to the Purchaser immediately informing the Supplier of any infringement claims raised by third parties and to the Purchaser proceeding in agreement with the Supplier in dealing with such claims and in the pursuit of Supplier's rights. Should any one of these conditions not be fulfilled, the Supplier shall be relieved of the obligation. Should an infringement of third-party patent rights be ascertained and should for this reason the Purchaser be enjoined by final decision from using any product supplied, either in whole or in part, the Supplier shall at own expense choose:

- a) obtain for the Purchaser the right to use the product supplied, or
- b) modify the product supplied in such a way that it becomes non-infringing, or
- c) replace the product supplied by another product of comparable efficiency which does not infringe any patent rights, or
- d) take back the product supplied against refund of the purchase price.

The Supplier shall not be liable in so far as third-party claims for infringement of patent rights are based on modifications made to the product supplied or the incorporation of additional devices or the combination of the product supplied with other equipment or devices not delivered by the Supplier on the part of the Purchaser or on the fact that the product supplied has been used for a purpose for which it was not intended. Likewise, the Supplier cannot be held liable for infringement of third-party patent rights for products supplied which were manufactured according to drawings, models or other data supplied by the Purchaser. In this case the Purchaser shall indemnify the Supplier in respect to third-party claims. The Purchaser shall not be entitled to further or additional claims on the ground of infringement of third-party patent rights. In particular, the Supplier will not compensate the Purchaser for any indirect or consequential damage such as loss of profit and loss of production. The Purchaser shall not acquire any right to the use of patent rights applying to the combined use of the products supplied with other products.

12. Liability

Unless expressly stipulated otherwise in these General Terms and Conditions, the Supplier, its employees, and all other persons appointed by the Supplier related to the execution of the contract are liable within the limits of the statutory provisions for damage or injury to persons and property up to an amount of 50.000 Euro for each case of damage, the total liability not exceeding 1.000.000 Euro. The Purchaser shall release the Supplier from obligations to meet third-party claims for damages in so far as these exceed the above-mentioned amounts. Any further or additional liability for damages on the part of the Supplier, its employees and all other persons appointed by the Supplier in connection with the execution of the contract is excluded, for pecuniary loss, such as loss of production and loss of profit, as well as liability for culpable breach of contract, negligence in the conclusion of the contract and the liability for tort caused by negligence. This does not apply in so far as compulsory liability is prescribed for legal reasons in cases of premeditated malice, gross negligence, or the absence of promised characteristics.

13. Validity, applicable law, place of performance and place of jurisdiction

- 13.1. Even in the event of individual clauses of the contract being invalid, its remaining parts shall continue to be binding. Should any clause be invalid wholly or in part, the contracting parties shall endeavor without delay to attain the effective purpose of the invalid clause in another legally admissible manner.
- 13.2. All contractual relations shall be governed by German Law except for the application of the Hague Conventions of 1.7.1964 relating to Uniform Laws concerning the International Sales of Goods.
- 13.3. The performance of this contract is conditional if no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade laws or any embargos or other sanctions exist. The Purchaser shall provide any information and documents required for export, transport and import purposes accordingly.
- 13.4. The place of performance for all contractual and legal claims shall be the registered office of the Supplier.
- 13.5. The sole place of jurisdiction for any disputes directly or indirectly arising from the contract shall be Stuttgart, Germany, if the Purchaser is a registered trader or company. The Supplier shall, however, also be entitled to bring an action at the place of the registered office of the Purchaser.
- 13.6. Any agreements, irrespective of whether they are entered into at the conclusion of the contract or after, must be realized in writing.