

Microcaps General Terms and Conditions

Sale of goods and Maintenance Version May 2024

1. Scope

These General Terms and Conditions are applicable for deliveries and services of Microcaps AG (hereinafter "Microcaps") to the Client. In case our delivery includes Software and accompanying documentation, the terms of the license agreement are applicable in addition to these General Terms and Conditions. In case of disputes, however, the license agreement shall prevail.

2. Offer and order

An offer submitted by Microcaps is valid during the period mentioned in the offer. If there is no respective information, Microcaps remains bound for 30 calendar days.

If the order of the Client deviates from Microcaps offer or order confirmation, the offer, the order confirmation respectively, applies, unless the Client raises an objection immediately after receipt.

Orders are only binding if they are placed in writing or subsequently confirmed in writing. Electronic orders and confirmations are considered equivalent.

3. Conclusion of the contract

The contract is deemed to be concluded upon receipt of an order confirmation by the Client or, upon absence of such confirmation, upon the delivery of the ordered products to the Client. All catalogues, brochures and publications on the Internet or anywhere else are considered to be an invitation to offer and are not binding for Microcaps.

Modifications or additions to these General Terms and Conditions or to the contract are not valid without written approval by Microcaps. Orders that deviate from the specifications published by Microcaps or contain additions or modifications made by the Client will only be effective if they have been expressly approved by Microcaps with an order confirmation.

4. Prices

If not expressly specified otherwise, all price information is net, excluding VAT.

The standard packaging of the ordered products is included in the net price. All other costs, such as for transport, insurance, taxes, customs duties as well as export, import or other necessary approvals will be invoiced as additional charges. The net price does not include any additional services performed by Microcaps, such as installation and commissioning etc.

Microcaps reserves the right to change prices at any time until the conclusion of the contract.

5. Delivery conditions

All times, dates and delivery deadlines are considered non-binding, unless their binding nature has been expressly agreed in writing. Binding delivery deadlines and dates that have been agreed upon in writing are met when the product is made available in the distributing warehouse before the corresponding dates have passed. If Microcaps has a delay in delivery, it is assumed that the Client continues to demand the delivery. Compensation for late delivery or for replacement is excluded.

Microcaps reserves the right not to deliver the ordered products if they are unavailable; in this case, Microcaps will immediately notify the Client of the non-availability and, if necessary, reimburse any payment already made.

6. Payment conditions

Microcaps invoices must be paid in full within 30 days after the date of invoice. After the payment deadline, the Client will automatically be in default and owe Microcaps a reminder charge of CHF 50.00 or interest for delay to the amount of 5% p.a. if the interest for delay exceeds the amount of the reminder charge. If the Client is in delay, Microcaps reserves the right to withhold further deliveries.

The Client is not entitled to offset outstanding accounts from Microcaps with any counterclaims.

7. Use and installation of Microcaps products

Microcaps products must be used in accordance with the specifications of the respective currently valid instructions.

8. Specifications

Except when otherwise expressly stipulated, the information published by Microcaps in text or picture form (e.g. illustrations or drawings) in catalogues, brochures, websites, assembly instructions or sheets and other publications conclusively defines the specific characteristics of the goods delivered by Microcaps and their application possibilities and does not represent any guarantee for durability or specific characteristics. The specific characteristics of the delivered products can deviate from that of images or samples in respect to material, colour or shape. Microcaps does not accept any responsibility for the performance or fitness of products for a particular purpose.

The specifications communicated by Microcaps are only to be regarded as a guideline. Microcaps reserves the right to change the communicated product specifications or to deliver other products of equal value from third-party suppliers in place of the ordered products.

9. Reservation of title

The title of supplied products remains with Microcaps until the Client has fully paid all invoices. If the Client defaults on payment of the purchase price, Microcaps shall be entitled to have the reservation of title entered in the reservation of title register at the Client's expense.

The Client may only sell, pledge or transfer for security the delivered products if it has fully met all payment obligations from the contractual relationship.

10. Passing of risk

Benefit and risk with regard to the products purchased pass to the Client upon placement of products in the possession of the shipper or upon collection by the Client at Microcaps Schlieren factory.

11. Duty of examination

The Client shall examine all products for defects directly upon receipt. Any defects are to be reported to Microcaps immediately in writing; the product will otherwise be deemed to be approved. Hidden defects must be reported in writing immediately after they are discovered.

12. Warranty

Microcaps warrants that the delivered products meet the specifications that are explicitly listed on the corresponding data sheets. For the rest, the warranty is excluded as far as permitted by law.

In particular, no warranty is given for damage resulting from or partly caused by the Client or by third parties acting within the scope of responsibility of the Client when:

- a) products are used in areas that are not specified in the instructions;
- b) products are used without observing the laws, official regulations or the instructions of Microcaps (especially regarding installation, commissioning, operating regulations and information on the data and assembly sheets);
- c) products are used under special conditions, especially under the continuous influence of aggressive chemicals, gases or liquids or outside of the permissible operating parameters or conditions for use;
- d) products are assembled, handled or installed incorrectly or without due care or not according to the respective authoritative state-of-the-art or are not used or installed by skilled qualified personnel;
- e) products are modified or repaired without prior written approval of Microcaps;
- f) products become worn out as a result of inappropriate or unintended use or excessive stress;
- g) products are stored inappropriately; or

h) the Client or third parties are responsible for damage.

The Client is liable for actions or omissions of auxiliary personnel as if these were his own actions.

The warranty period is twelve (12) months from the date of passing of risks. The warranty period for products that have not been manufactured by Microcaps are exclusively subject to the warranty terms and conditions of the respective manufacturer.

The Client shall immediately initiate all suitable measures to minimise damage. If a timely report has been made in accordance with Section 11 above, Microcaps may either decide to replace defective products with products that are equal or equivalent, to have them repaired either by Microcaps or third parties at Microcaps' expense or to issue the Client a credit note in the amount of the net price paid for the defective product. Microcaps will decide which of these measures is taken.

Any extra charges incurred in connection with a replacement, such as transport costs, labour costs etc., shall be fully borne by the Client. The warranty period does not restart from the beginning for replaced products.

Microcaps can require the Client to replace particular defective products or parts of products in a system to prevent damage, whereby reasonable Client expenditures in this context that are approved by Microcaps will be reimbursed by Microcaps.

13. Maintenance services

The maintenance services to be rendered shall be agreed in the order confirmation or in a separate offer detailing the scope of work.

If maintenance services have been agreed but not specified in the order confirmation, the maintenance shall cover the following services if applicable to the purchase product:

- a) Hardware maintenance shall include preventive maintenance (servicing to safeguard operational reliability) and corrective maintenance (fixing defects so that normal operability is resumed) through repair or replacement of defective parts or installation of technical upgrades.
- b) Software maintenance shall include the remedy of errors and the elimination of faults in the software for the purpose of preserving its usability. Subject to other agreement in writing case by case, the remuneration for software maintenance shall not include the integration of new functions and the corresponding user rights.
- c) Support services shall include advice and assistance to the Client with respect to the use of the hardware (including the operating software) or the software or the system covered by the contract.

If requested Microcaps shall provide support to diagnose the cause of a fault resulting from the interaction of several systems or components. If the fault was not caused by the hardware for which Microcaps is responsible, the Client shall be billed separately for this service.

Microcaps shall be under no obligation to provide maintenance services in an of the following events:

- a) If the hardware or software has been damaged or modified by the Client.
- b) If problems arise due to the Clients negligence or use not in conformance with the documentation provided by Microcaps.

Client shall provide information to facilitate resolving technical issues at Microcaps request. Further, Client shall, to the best of its knowledge, notify Microcap of any defect, malfunction or programming error.

14. Emerging intellectual property rights

Intellectual property rights (copyrights, patent rights, know-how etc.) created during the performance of the contract, particularly on works, concepts, hardware and individual software including source code, program description in written or machine-readable form specially developed by Microcaps belong to Microcaps.

The Client has a non-transferable and non-exclusive right to use the emerging intellectual property rights within the purpose of the contract. In case of software this right includes the use on the hardware as agreed and their successor systems. For a changed operating system or higher performance class the modification and extension of the right of use requires the approval of Microcaps.

15. Pre-Existing intellectual property rights

Pre-Existing intellectual property rights (Copyrights, patent rights etc.) remain with Microcaps or third parties.

The Client obtains a non-exclusive and non-transferable right to use the pre-existing intellectual property rights for the agreed purpose.

16. Confidentiality

Both parties shall treat in strict confidence all information which is neither generally known nor generally accessible, and shall use it only for the purpose of fulfilling the concluded contract. Moreover, the parties shall ensure the confidential treatment by their personnel and consulted specialists. In case of doubt, all information is to be treated confidentially.

Confidential information of a party does not include information which:

- a) was already known to the other party, before it was made accessible by the disclosing party;
- b) is or becomes generally known without the other party's responsibility;
- c) was disclosed to the other party by a third party without any transfer restriction;
- d) was developed by the other party itself without using or referring to the confidential information of the protected party;
- e) has to be disclosed based on a legally binding decision of a law court, administrative or other authority. In this case the party under the obligation to disclose has to inform the other party immediately about the decision and support protective measures the other party may want to take.

This obligation of confidentiality already exists prior to the conclusion of the contract and remains valid for a period of 5 years after termination of the contractual relationship.

Without the approval of the other party the disclosure of information to third parties is not permitted.

Advertising and publications about specific services in connection with the contractual relationship require the written approval of the other party, save that Microcaps may use your name publically to identify you as a client in connection with specific products and services or otherwise.

17. Data protection

Each party may have access to personal data (for example names, functions, business units, contact details and communication data) relating to the other party's employees, representatives, consultants, agents, contractors and other personnel ("Personnel Data") in relation with the contract that is subject to these General Terms and Conditions.

Personnel Data may be processed only in accordance with applicable law, applying appropriate security measures (e.g. technical and organizational measures, etc.), and only in order to enter into and perform the contract and compatible purposes including but not limited to order and payment processing, taxes and import/export management, customer relationship management, business accounting and general administrative purposes.

18. Compliance

The parties shall comply with applicable legal standards.

19. Limitation of liability

The liability of Microcaps is defined conclusively under Section 12. Any other claims of the Client towards Microcaps, irrespective of the legal basis, including but not limited to price reduction or rescission, are excluded and waived expressly herewith.

Client does not have any title to claim for damage which does not occur on the products themselves. In particular, Microcaps does not accept any liability for costs incurred for determining the causes of damage, for expert opinions or indirect or consequential damage (including damage resulting from defects) of any kind, such as loss of use, downtimes, loss of profit or returns etc. unless they have been caused by Microcaps intentionally or due to gross negligence.

Customer undertakes to defend, indemnify and hold harmless Microcaps, its current or former executive bodies, managing directors, employees, other auxiliaries, sub-contractors, and their respective legal successors (collectively, the "Indemnitees"), from and against any and all claim, liability, cost, expense, damage, deficiency, loss or obligation of any kind or nature (including, without limitation, reasonable attorney's fees and other costs and expenses of litigation), suffered directly or indirectly by any of the Indemnitees based up on, arising out of, or otherwise relating to:

- i. any breach of any representation or warranty made by the Customer in this Agreement;
- ii. any failure by Customer to perform or fulfill any of its obligations set forth in this Agreement;
- iii. the negligence or intentional misconduct of Customer, any subcontractor of Customer, or any of their respective employees or agents;
- iv. any failure of Customer, its subcontractors, or their respective employees to comply with any applicable law;
- v. any claim, litigation, or proceeding by any third party relating in any way to the fragrances, fragrance compositions or fragrance mixtures, especially perfumes, supplied by Customer to Microcaps for encapsulation under this Agreement (collectively, the "Fragrance Compositions"):
 - a. regardless of whether *Microcaps* was/is aware of the chemical or physical properties, composition or ingredients of the Fragrance Compositions concerned; and
 - b. regardless of whether *Customer* knew/knows the chemical or physical properties, composition or ingredients of the Fragrance Compositions concerned;
- vi. any claim, litigation, or proceeding alleging that the:
 - a. *delivery* of Fragrance Compositions from Customer to Microcaps;
 - b. *processing* of Fragrance Compositions by Microcaps, particularly their encapsulation; or
 - c. *supply* from Microcaps to Customer of Fragrance Compositions encapsulated in capsules;

infringes any third party's patent, utility model, copyright, trademark, business/manufacturing secret of other intellectual property interest.

Such indemnification shall include, without limitation, the obligation of Customer:

- i. to reimburse Microcaps for paid costs and expenses (losses) due to any such claims incurred, whether or not foreseeable;
- ii. to advance payment to Microcaps for its unpaid costs and expenses (e.g. liabilities, claims) due to any such claims, whether or not foreseeable; and
- iii. to provide at own cost all reasonable assistance to Microcaps – whether people, data or records – and not do anything, which might prejudice the litigation or any settlement negotiations.

Microcaps undertakes to give prompt notice in writing to Customer of events alleged to trigger an indemnity, and may allow the Customer to conduct negotiations and proceedings.

The amount and type of insurance coverage on the part of the Customer will in no way be construed as limiting the scope of the indemnification in this clause.

The indemnity obligations of Customer under this clause shall survive the expiration or termination of this Agreement.

The extent to which Microcaps' liability is excluded or limited also applies to the personal liability of their employees, staff, representatives and vicarious agents.

20. Indemnification

Upon Microcaps' first request, the Client shall indemnify and hold harmless Microcaps in full from any third party claim in conjunction with the events listed under Section 12, letters a) to h). This also applies to claims in connection with product liability.

21. Force majeure

Neither Microcaps nor the Client accepts liability for damage of any kind if obstacles occur which they are unable to prevent in spite of all due care, irrespective of whether these occur at Microcaps, the Client or a third party. Such obstacles are, for example, epidemics, pandemics (whether already existing at the time of conclusion of the contract or not), mobilisation, war, revolts, severe interruptions of operations, accidents, labour disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished goods, non-availability of important work pieces, magisterial injunctions or omissions, embargos, export or import restrictions, acts of God or any other circumstances which are, to a large extent, beyond the control of Microcaps or the Client. Payments, however, may not be retained or delayed with reference to such circumstances. In such cases, both parties shall, without delay, undertake all effective measures which can be expected of them to prevent damage, or if damage occurs, to minimise the degree of this damage as far as possible.

22. Resale

The Client shall not resale any of the products and services delivered by Microcaps.

23. Set-off

The Client shall not be entitled to set-off.

24. Modifications

Microcaps reserves the right to modify these General Terms and Conditions at any time.

25. Severability clause

In the event that one or more of the aforementioned provisions should be or become invalid, the validity of the remaining provisions shall not be affected thereby.

26. Applicable law and jurisdiction

Swiss law shall apply exclusively, excluding application of the UN Convention on the International Sale of Goods of 11 April 1980 (CISG).

The ordinary courts at Microcaps' domicile shall have exclusive jurisdiction.