

## GENERAL TERMS AND CONDITIONS OF SALES & DELIVERY FOR PRODUCTS WITH TARGET MARKET USA & CANADA

### 1. General :

**1.1** These General Terms and Conditions of Sale and Delivery (these "Terms") are applicable to all sales to US and Canadian customers (the "Customers" and each, individually, "Customer") of Micronel AG ("Micronel") and, unless otherwise agreed in writing, all related transactions between Micronel and Customer.

**1.2** Micronel shall sell and deliver to Customer and Customer shall purchase and accept from Micronel the products (herein, the "Products") described in any confirmed written order, agreement or quotation or any combination thereof (collectively, the "Order") pursuant to the terms and conditions of the Order and those specified below shall constitute the entire agreement between Micronel and Customer regarding the Products.

**1.3** No other terms or conditions shall be of any effect unless otherwise specifically agreed upon by Micronel and Customer in a separate written agreement duly signed by Customer and Micronel. Customer will be deemed to have assented to all Terms if any part of the Products is accepted by Customer. If Customer finds any Term not acceptable, Customer must so notify Micronel at once and must reject the Products delivered under these Terms. Any additional or different terms or conditions contained in Customer's order or response hereto shall be deemed objected to by Micronel and shall be of no effect. No general terms and conditions of Customer shall at any time form a part of the content of any contract or agreement between Customer and Micronel, even if they are not further expressly rejected by Micronel.

**1.4** No Order is binding upon Micronel until acceptance of the Order in writing by Micronel (including by fax transmission or e-mail). Notwithstanding any prior acceptance of an Order by Micronel, Micronel shall have no obligation to deliver Products if the Customer is in breach of any of its obligations hereunder, or any other agreement between the Customer and Micronel, at the time Micronel's performance was due.

**2. Prices:** Unless otherwise agreed by Micronel in writing, all prices for the Products are subject to change without prior notice; provided that once an Order is accepted by Micronel the price set forth in the Order may not be changed except by mutual agreement of both parties in writing. Prices in catalogs or brochures are not binding until confirmed in writing by Micronel. Unless otherwise agreed in writing between the parties, all prices are net, [Ex Works (per Incoterms 2000)] and exclusive of packaging, transport, delivery, assembly, installation, and other costs.

### 3. Delivery:

**3.1** Customer understands that all shipping and delivery dates are tentative. Nevertheless, Micronel shall at all times use reasonable commercial efforts to meet all shipping and delivery dates. Except as otherwise specified in these Terms, the Products shall be sold and delivered EX WORKS (per Incoterms 2000) Micronel's facility in Tagelswangen, Switzerland. Title to and risk of loss for the Products shall pass to Customer upon delivery thereof to any common carrier at such facility.

**3.2** In no event shall any loss, damage, injury or destruction operate in any manner to release Customer from the obligation to make payments required herein. Micronel shall not be liable for any delay or failure to perform in whole or in part, caused by any "Force Majeure." Force Majeure, as used herein, shall include but not be limited to governmental prohibition, restriction or other action, fire, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies and raw materials from third-party suppliers or subcontractors (for any reason), delays in transportation, civil unrest, hostilities or war or other causes beyond Micronel's control whether or not similar to those mentioned herein.

**3.3** If Customer fails to accept delivery due to reasons beyond Micronel's control, Customer shall nonetheless make payment to Micronel. If Customer wrongfully rejects or revokes acceptance of the Products or fails to make payment due on or before delivery, or repudiates all or part of the contract for the Products shipped, Micronel may withhold delivery, or stop delivery of the Products, cancel any or all contracts with Customer and/or sue for damages at Micronel's exclusive option. If Customer causes a delay in the delivery of the Products or any part thereof, Micronel, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes Micronel substantial inconvenience, Micronel has the right to stop delivery of the Products whose delivery is delayed, cancel any or all contracts with Customer and/or sue for damages at Micronel's exclusive option. In addition, Micronel reserves the right to recoup any expenses

incurred by Micronel as a result of such delays. Unless otherwise agreed in writing, Micronel reserves the right to make partial shipments and to submit invoices for partial shipments.

**3.4** Micronel shall have the right to make partial deliveries as necessary. Micronel reserves the right to make changes and modifications to the Products at any time. Delivery of such changed or modified Products shall be permitted to the extent that the changes and modifications have no material impact on the nature and use of the Products.

**4. Transportation:** Transportation shall be at Customer's expense. Micronel shall not be liable for any costs of transportation including without limitation, charges incurred at the point of destination such as spotting, storage, switching, drayage, demurrage, pier loading charges, etc. Insurance for the Products during transport shall be the sole responsibility of the Customer.

**5. Taxes:** The amount of any sales, use or other tax or duty, however designated, levied or based on the price of the Products and payable or required to be collected by Micronel shall be added to the price quoted and billed to and paid by Customer as if originally included herein. Irrespective of whether such tax or duty has been added to the Price Customer shall reimburse Micronel therefor. If Customer claims an exemption from such tax or duty Customer shall provide Micronel with appropriate exemption certificates or other documents acceptable to Micronel in its sole discretion.

**6. Terms of Payment:** Unless otherwise agreed to in writing between Micronel and Customer, payment is due within thirty (30) days from date of invoice. Payment must be made by Customer when due without offset, deduction or counterclaim regardless of any claim by Customer. Past due amounts are subject to a monthly service charge at a rate per annum equal to the lesser of \_\_\_% or the maximum rate permitted by applicable law.

**7. Credit:** Each delivery to be made to Customer shall be subject to receipt of cash or availability of credit arrangements made by Customer with Micronel. If payment is not made in accordance with these Terms, or if at any time in Micronel's sole and absolute judgment Customer's credit standing has been impaired, Micronel may withhold or defer delivery of any Products to be sold hereunder until satisfactory cash or credit arrangements have been made. If Customer fails, neglects or refuses to pay or provide Micronel with credit arrangements satisfactory to Micronel in its sole and absolute discretion, or to comply with these Terms or the terms of any credit arrangement, then Micronel may, without waiving any other remedies it may have against Customer, terminate any agreement then in place without further liability on Micronel's part.

### 8. Security Interest:

**8.1** As security for the timely payment and performance of all amounts due by Customer to Micronel, Customer hereby grants to Micronel a first priority security interest (the "Security Interest") in the Products following delivery thereof to Customer (the "Collateral"). The Security Interest shall remain in force until payment in full of the entire purchase price for the Products and any other amounts due to Micronel by Customer.

**8.2** If requested by Micronel, Customer shall deliver to Micronel, in form and substance satisfactory to Micronel, and duly executed as required by Micronel, financing statements and other security interest perfection documentation in form and substance satisfactory to Micronel, duly filed under the UCC in all jurisdictions as may be necessary, or in Micronel's opinion, desirable, to perfect Micronel's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect Micronel's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Micronel's security interest.

**9. Inspection and Testing:** Customer shall perform a visual inspection of the Products **within eight (8) days of delivery** to verify there has been no obvious external damage during shipment and that all ordered units have been delivered. In the event Customer's visual inspection reveals any external damage or that the products delivered do not match the type or quantity ordered, Customer shall notify Micronel within eight (8) days of delivery. Prior to any application of any Product, Customer shall test the suitability of such Product for the application.

## 10. Product Warranty:

**10.1** For a period of **12 months** from the date of shipment to the Customer (the "Warranty Period"), except as set forth in any Order Micronel warrants that all Products and spare parts are: (a) manufactured by Micronel as described in Micronel's published specifications (if any) and (b) substantially free from defects in materials or workmanship.

**10.2** The foregoing warranty is subject to the proper storage, transportation, installation, use, and absence of any modification, or alteration of the Products. All warranty claims must be made by Customer to Micronel in writing no later than **ten (10) days** after the discovery of the defect giving rise to the claim. Warranty claims may be brought after the end of the Warranty Period only if the defect giving rise to the claim was discovered prior to the end of the Warranty Period.

**10.3** Unless expressly warranted in Micronel's order confirmation, Micronel makes no warranty that the Products comply with applicable law, regulations or specifications in any jurisdiction in which the Products may be sold or marketed in any jurisdiction. Any governmental or other approvals necessary in connection with the resale, marketing, distribution or use of the Products shall be the sole responsibility of the Customer.

**10.4** EXCEPT AS EXPRESSLY SET FORTH HEREIN, ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

## 11. Indemnification

**11.1** Subject to the limitations set forth in these Terms, Customer agrees to diligently defend, and to hold harmless and indemnify, Micronel and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "Micronel Indemnitees") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, and in each case as such costs are incurred (the "Losses") (i) due to any use of the Products, whether authorized or unauthorized, and irrespective of whether such claim alleges personal injury, product liability, strict or absolute liability, breach of contract or implied contract or warranty, or any other claim of any nature on any theory of recovery, except to the extent such Losses have been incurred as a direct result of a breach of Micronel's warranty, Micronel's willful and knowing infringement of the intellectual property rights of any third party, or Micronel's gross negligence or willful misconduct, or (ii) arising out of any breach or misrepresentation of any of Customer's representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated, or (iii) arising out of the improper storage, handling, transportation, modification or alteration of the Products by the Customer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of the Customer; provided that Customer shall not be required to indemnify any Micronel Indemnitee to the extent Micronel shall be required to indemnify any Customer Indemnitee pursuant to Section 11.2.

**11.2** Subject to the limitations set forth in these Terms, Micronel agrees to diligently defend, and to hold harmless and indemnify, Customer and its directors, officers, employees, shareholders, affiliates, agents and representatives (the "Customer Indemnitees" and together with the "Micronel Indemnitees," each an "Indemnitee" and, collectively, the "Indemnitees") from and against any and all Losses arising out of (i) Micronel's strict liability, negligence or willful misconduct, or (ii) any breach or misrepresentation of any of Micronel's representations or covenants or other terms contained in these Terms or any agreement in which these Terms are incorporated; provided that Micronel shall not be required to indemnify any Customer Indemnitee to the extent Customer shall be required to indemnify any Micronel Indemnitee pursuant to Section 11.1.

**11.3** Each Indemnitee shall promptly notify a party that may have indemnification obligations under this Section (the "Indemnitor") of any claim, suit or proceeding; provided, however, that any failure by such Indemnitee to provide prompt written notice hereunder shall excuse the Indemnitor only to the extent that the Indemnitor is prejudiced by such failure to give notice. The Indemnitee shall cooperate with the Indemnitor with regard to the defense of any suit or threatened suit. The Indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the Indemnitor shall obtain the Indemnitee's prior written consent to any settlement unless the settlement involves solely the payment of money and all of such payment is payable by the Indemnitor, its insurers, and parties other than any Indemnitees.

**11.4** The Indemnitor shall notify an Indemnitee in writing within **[10]** days of the Indemnitor's receipt of knowledge of any accident or safety incident involving the Products which results in personal injury or damage to property, or any government or similar investigation, claim or inquiry involving the Products. The Indemnitor shall fully cooperate with each Indemnitee in the investigation and determination of the cause of any such accident or incident, and shall make available to each Indemnitee all statements, reports and tests made by the Indemnitor or made available to the Indemnitor by others. The furnishing of such information to an Indemnitee and any investigation by an Indemnitee of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by an Indemnitee, nor shall it affect the indemnification obligations above.

**11.5** Customer represents and warrants that it has in place customary insurance and liability waivers to cover the use and operation of the Products by Customer's personnel, customers, and third-party users, and Micronel represents and warrants that it has in place the necessary insurance to cover product liability. In addition, each of Micronel and Customer represents and warrants to the other that it maintains customary insurance to support the indemnification obligations assumed by it in these Terms.

## 12. Limitation of Liability:

**12.1** Except as otherwise expressly set forth herein, Customer's exclusive remedy for defective or non-conforming Products shall be, at Micronel's sole and exclusive option, the repair or replacement of the Products.

**12.2** To obtain repairs under warranty, Products or components must be shipped, freight paid, to Micronel AG MICRONEL AG, Zürcherstrasse 51, CH-8317 Tagelswangen, Switzerland. Upon repair or replacement of the defective or non-conforming Products, Micronel shall have no further obligation to Customer with respect to such defect or non-conformity. Transportation charges for the return of Products shall not be paid unless authorized in advance by Micronel.

**12.3** Micronel shall not be liable for, and Customer assumes responsibility and holds Micronel harmless for, all personal injury and property damage resulting from the handling, possession, use or resale of the Products by Customer, whether the Products are used alone or in combination with other products or equipment.

**12.4** **Absent its gross negligence or willful misconduct, Micronel shall not be liable for damages arising out of or in connection with any Products that exceed the purchase price of such Products.** It is agreed and acknowledged that the provisions of these Terms allocate the risks between Micronel and the Customer in a fair and equitable manner, Micronel's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, Micronel would not have entered into these Terms.

**12.5** In no event shall either party be liable to any person for indirect, incidental, consequential, punitive or other non-compensatory damages (including but not limited to loss of profits or goodwill, or additional expenses incurred), whether pursuant to a claim in contract, tort or otherwise and whether in an action for breach of warranty or otherwise.

**12.6** In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.

**12.7** With respect to any costs, damages, interest or claims adjudicated by a court or arbitration tribunal located in the United States of America and its possessions (the "US") or applying the laws of the US or any of its states or territories for which Micronel is liable, Micronel shall in any case only be liable to the extent it would have been liable pursuant to the internal laws of Switzerland, and, as between Customer and Micronel, any liability in excess of any liability so adjudicated to Micronel shall be borne by Customer.

**13. Proprietary Information:** All layouts, models, designs, sketches drawing blueprints and patterns incorporated in the Products or otherwise provided to Customer are the proprietary information of Micronel. Customer agrees not to disclose or utilize any such information nor to manufacture or have manufactured any products which are the same as or similar to any Products.

**14. Miscellaneous:**

**14.1** These Terms and all claims arising out of or related to these Terms, including tort claims, shall be governed by and construed in accordance with the laws of Switzerland without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Switzerland. All disputes and/or legal proceedings related to these Terms shall be maintained in the courts located in Zürich, Switzerland. In the event of any legal action, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees, expert witness fees, and any other costs incurred to bring or defend such action. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THESE TERMS.

**14.2** If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

**14.3** In the event of a violation or threatened violation of Micronel's proprietary rights, Micronel shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Micronel would suffer irreparable harm.

**14.4** Customer may not assign its order or any right or interest therein or any other obligation arising hereunder without the prior written consent of Micronel.

**14.5** The waiver by Micronel of any breach or violation of these Terms by Customer shall not be construed as a waiver of any other existing or future breach or breaches by Customer

**14.6** The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.

**14.7** These Terms shall apply to all sales of Products to Customer and shall survive the termination or cancellation of any other agreements, including but not limited to development or supply agreements, between Micronel and Customer.