

## Miba General Terms & Conditions of Purchase

### 1. General Information

The Purchaser (hereinafter: the Purchaser) is Miba AG or an affiliate of Miba AG (regardless of the percentage shareholding), depending on what is indicated in the order. The Vendor (supplier) (hereinafter: the Vendor) is the company which draws up a contract with the Purchaser in the area of application to which these T&Cs of Purchase apply. Regardless of whether explicit reference is made to them, these T&Cs of Purchase apply to all legal transactions between the Purchaser as customer, buyer, ordering party or similar and the Vendor, including but not limited to the production and supply of goods, processing of semifinished goods and provision of goods and services (hereinafter also referred to jointly as goods & services). These T&Cs of Purchase are available at <http://www.miba.com/de/agb/> in several languages; the language version in the language in which the contract document for which these T&Cs of Purchase form the basis was drawn up shall be deemed the authoritative version (the other language versions shall be deemed non-binding and are provided for informational purposes only); in cases of doubt, the German version shall be deemed the authoritative version. The Vendor shall accept these T&Cs of Purchase at the latest on the date of confirmation or start of implementation of the Purchaser's order. The legal relations between the Purchaser and the Vendor shall in all instances be governed by these T&Cs of Purchase, unless other written provisions are explicitly set forth in a given individual case. This shall apply regardless of any reference made by the Vendor to its own terms & conditions of sale or other terms and conditions, including if the Purchaser has not explicitly objected to the inclusion thereof. Furthermore, this shall also apply in cases where the Purchaser, in full awareness that the Vendor's terms & conditions contradict or differ from its own, accepts the contractual goods & services without reservation.

### 2. Offer

With regard to the volume and specifications of the goods & services, the Vendor's offer shall adhere precisely to the Purchaser's request, and in the event of any deviations the Vendor shall send explicit notification. All offers and any cost estimates made by the Vendor shall be provided at no cost. If the Vendor's offer does not indicate an acceptance deadline, the Purchaser is in all instances entitled to accept an offer from the Vendor within the two-week period following receipt of the offer.

### 3. Orders and Purchase Orders

Orders placed by the Purchaser are only legally binding if they are set forth in writing or sent electronically. In order to be valid, orders which are placed orally or by telephone shall be explicitly confirmed in writing by the Purchaser. The Vendor shall confirm the Purchaser's orders and purchase orders in writing within 3 (three) working days (i.e., Monday to Friday, not including statutory public holidays in the Purchaser's country of domicile) of receiving the Purchaser's order. If that deadline has passed (definitive date: date received at the Purchaser's premises), the Purchaser is entitled to cancel its order (without thereby establishing grounds for any claims by the Vendor). If it is not feasible for the Vendor to issue an order confirmation within the aforementioned three-day deadline, the Vendor shall proactively and within the aforementioned deadline send the Purchaser written notification indicating a binding date on which the Purchaser will receive the order confirmation at its premises. The Purchaser, at its own discretion, is then entitled to either accept the new date or to cancel the order (without thereby establishing grounds for any claims by the Vendor). If an order confirmation from the Vendor differs – including minor deviations – from the Purchaser's order, the Vendor shall alert the Purchaser and shall obtain the Purchaser's explicit written approval for the deviation. At any time (and without thereby establishing grounds for any claims by the Vendor), without requiring approval the Purchaser is entitled to reject goods & services which are not in accordance with the order, even if the deviations are only minor.

### 4. Subcontractors; Suppliers; Third Parties

The Vendor requires the Purchaser's prior written approval if it intends to use subcontractors, suppliers or third parties, and the Purchaser does not need to provide grounds if it refuses to grant that approval. The

Vendor shall only use subcontractors, suppliers or third parties who provide adequate warranty for technologically satisfactory and timely contractual performance. Regardless thereof, the Vendor shall continue to fulfill all its existing obligations even if approval has been granted. Insofar as it uses subcontractors, suppliers or third parties of any kind to fulfill the contract or makes use of their products or services, the Vendor is liable to the same extent as if it had rendered performance itself.

If necessary, the Purchaser and its customers are entitled to perform inspections of the Vendor and its subcontractors, suppliers or third parties of any kind who are used by the Vendor to fulfill the contract, and to facilitate that the Vendor shall allow the Purchaser and its customers access to the relevant business premises if asked to do so. The Vendor shall ensure that the Purchaser's right to perform inspections, and the duty to allow access to the relevant business premises, also applies to its subcontractors, suppliers and third parties.

## **5. Prices**

The agreed prices (wages also fall into this category) are guaranteed fixed prices for the contractual goods & services and include all of the Vendor's costs associated with provision of the goods & services. The Vendor shall provide warranty for cost estimates. It is hereby explicitly stated that prices shall not be raised, regardless of the grounds. Unless agreed otherwise in writing, the prices are Delivered Duty Paid (DDP, per Incoterms 2010) to the Purchaser's location indicated on the order/order form. If no prices are shown on the order, they must be indicated in the relevant confirmation; the Purchaser reserves the right to reject the price set by the Vendor (without thereby establishing grounds for any claims by the Vendor) and to refrain from signing the contract.

Payment in full of the amount due shall fully satisfy all transfer/granting of rights to the Purchaser, in particular the rights set forth in Sections 15 and 16 herein, regardless of the type and scope of use and exploitation by the Purchaser.

## **6. Waste Disposal**

The Vendor hereby states its willingness to and makes an offer to the Purchaser to take back the goods supplied by the Vendor if instructed to do so by the Purchaser, in order to allow expert waste disposal in compliance with the relevant regulations. The Purchaser shall reimburse the Vendor at market rates for the resulting costs, once the items have been disposed of in compliance with the relevant regulations and suitable proof has been provided.

## **7. Delivery Deadlines; Delayed Delivery**

The agreed delivery deadlines and delivery periods are binding. Unless agreed otherwise in writing, the delivery deadline is the date shown on the Purchaser's order. The delivery deadline/delivery period shall be deemed to have been fulfilled once the goods & services have been delivered to/rendered at the delivery address shown on the order. Goods & services which are provided before the agreed delivery deadline shall be deemed to have been provided on the agreed delivery deadline date. In the event of delayed delivery – including if that only applies to certain parts of the goods & services – the Purchaser is entitled to either (i) insist that the contract be upheld or (ii) at its own discretion, and after having set a 14-day follow-up deadline, withdraw from the entirety of or the affected part of the contract if the contractual items are not provided within the follow-up deadline, and (iii) in addition to (i) or (ii) demand payment of resulting damages. Regardless of the above, as soon as it becomes aware that timely delivery of all or part of the goods & services will not be feasible, the Vendor shall immediately send the Purchaser written notification stating the reasons and the anticipated length of the delay. Once notification has been sent, the Purchaser, at its own discretion, is entitled to immediately withdraw from the entirety of or affected part of the contract and to demand payment of damages on grounds of non-performance. If there are explicit provisions stating that the goods & services shall be provided on a specified date (fixed-date transaction), in the event of delay the Purchaser is entitled to withdraw from the contract without setting a follow-up deadline and to claim damages. If the Purchaser withdraws, this does not entitle the Vendor to assert any claims against the Purchaser.

## **8. Materials Made Available**

Materials which the Purchaser makes available to the Vendor shall remain the Purchaser's property and shall be stored by the Vendor separately from its own goods at no charge and clearly labelled and managed as property of the Purchaser. The Vendor may only use the materials for the purposes of providing goods & services to the Purchaser. If the value of the materials falls or they are lost, the Vendor shall indemnify the Purchaser against damages or claims and pay compensation as stipulated in the relevant legislation. If a third party asserts claims with regard to the materials, the Vendor shall immediately notify the Purchaser in writing and, at its own cost, shall take all necessary action to defend the Purchaser's property rights.

## **9. Insurance**

All shipments are covered by shipping insurance under the Purchaser's general insurance policy. The Vendor only needs to obtain and provide coverage via appropriate shipping insurance if the Purchaser has demanded it in writing in a given instance. However, the Vendor shall, at its own cost, obtain insurance coverage from reputable, solvent insurance companies, which shall include coverage against any claims arising from product liability for property damage and personal injury, claims arising from infringement of third-party rights, and vehicle recall liability. The insurance coverage shall provide appropriate cover based on the value and use of the contractual goods & services, with a maximum insured amount of at least EUR 5 million per year. Upon demand, the Vendor shall present to the Purchaser proof of insurance issued by the insurer. If the Purchaser inspects the proof of insurance or refrains from demanding that proof of insurance be presented, this does not under any circumstances mean that the Vendor can forego its aforementioned duty to obtain insurance. Furthermore, the fact that an insurance policy is in place does not in any way limit the Vendor's obligations or liability arising from the contractual relationship in question. If an insured event relating to the contractual goods & services occurs, the Purchaser and the Vendor shall provide each other with all necessary information regarding the circumstances and incidents surrounding the insured event. The Vendor hereby transfers to the Purchaser in advance all entitlements from the insurance policy in connection with an insured event of this kind. The Vendor shall notify the insurer regarding this transfer and, insofar as necessary, obtain its approval for the transfer. Payments which the Purchaser receives based on the entitlements under the insurance policy which have been transferred to it shall be offset against the claims against the Vendor relating to the insured event and shall reduce them accordingly.

## **10. Warranty**

The Vendor guarantees that the contractual goods & services can be used for their intended purpose, are state-of-the-art, and comply with the relevant standards, official specifications and trade association provisions. Furthermore, the Vendor guarantees that the goods & services are not encumbered by third-party rights and were manufactured, acquired and marketed without infringing any confidentiality requirements, industrial property or other protective rights or fair competition provisions. Moreover, the Vendor guarantees that use of the contractual goods & services will not wholly or partly, or directly or indirectly, infringe industrial property rights or intellectual property rights of third parties, and the use thereof will not result in unauthorized disclosure of commercial or business secrets or other confidential information of third parties. The Vendor shall indemnify the Purchaser against any damages and claims which are asserted in connection therewith (including all associated costs, in particular the costs of legal action). The warranty period for movable items is 48 months following acceptance of the goods & services. For goods & services supplied under warranty provisions, the warranty period shall start anew. The Purchaser is not obligated to perform inspections or send defect reports. Thus, the statutory duty to perform inspections and send defect reports (§§ 377 f, Austrian Commercial Code [*UGB*]) regarding contractual goods & services is not applicable. By way of derogation from the non-mandatory provision stating that warranty claims shall in all instances be asserted judicially (§ 933, Austrian Civil Code [*ABGB*]), it is hereby agreed that warranties which are asserted under warranty obligations may be asserted not only judicially but also in writing, provided the appropriate deadline is met. If a defect is reported in writing in this manner, the warranty period and ongoing payment deadlines shall be interrupted, and shall start to run again once the defect has been fully rectified and the item has been handed over to the Purchaser. If delivered goods & services are defective, at the Purchaser's discretion, the Vendor shall either rectify the defect within an appropriate deadline set by the Purchaser or replace the goods & services.

If it is determined (e.g., via voluntary random sampling by the Purchaser) that certain parts of the goods & services are defective, the Purchaser is entitled to reject the goods & services in their entirety and return them to the Vendor at the latter's expense. The Vendor has sole responsibility for separating defective items from non-defective items. If both rectification of the defect and replacement are (i) not feasible or (ii) unreasonable for or unacceptable to the Purchaser or (iii) if no rectification or replacement is performed or is only partially performed, the Purchaser, at its own discretion, is entitled to either withdraw from the contract or demand a price reduction. In the event of withdrawal from the contract, goods which have already been delivered shall be returned to the Vendor at its expense and risk. In urgent cases, the Purchaser is entitled to itself perform the necessary rectification or follow-up work at the Vendor's expense and risk, or to arrange for a third party to do so. The obligation to provide warranty also includes the duty to bear the costs of on-site defect rectification and removal and reinstallation. Aside from this, the relevant statutory warranty provisions apply. Contractual provisions which waive the applicability of the statutory warranty provisions in a manner detrimental to the Purchaser are not permitted.

If a third party alleges to the Purchaser that its rights have been infringed due to use of the goods & services and asserts a claim (e.g., a cease & desist claim or a damages claim), the Vendor shall obtain the necessary usage rights for the Purchaser by drawing up a license agreement. If this is not done within a reasonable deadline, the Purchaser, at its own discretion, is entitled to withdraw from the contract or to demand a price reduction commensurate with the problem and to demand appropriate damages.

## **11. Damages; Product Liability**

The Vendor shall be liable for all damages which are caused by the Vendor or its subcontractors, suppliers or other parties used by the Vendor for contractual performance, and shall indemnify the Purchaser against all such damages or claims (including all associated costs and expenses, in particular the costs of legal action). The Purchaser's claim to compensation shall cover the entirety of the damages, including lost earnings and all consequential damages suffered by the Purchaser, its contractual partners and/or end customers, and its contractual partners and/or end customers shall be entitled to assert such damages claims directly against the Vendor (contract in favor of third parties). In the event of a product recall carried out by the Purchaser or its customers (i.e., whereby goods & services that have been provided to the end customer undergo checking for defects, with a view to avoiding property damage or personal injury, and at the Purchaser's discretion the defect is rectified, if necessary, via replacement or repair), the Vendor shall bear the cost thereof regardless of its culpability, unless it can prove that the goods & services supplied by it were not the cause of the product recall. The Vendor guarantees that in terms of design, production and instructions the delivered products are free of defects as defined in Austria's Product Liability Act (Federal Law Gazette for the Republic of Austria [BGBl] No. 99/1988 (as amended)) and other applicable product liability provisions. The Vendor guarantees in particular that based on the prevailing state of the art of science and technology at the time the items were marketed, no defects could be found in the delivered products. The Vendor shall send the Purchaser written notification concerning any planned changes in the materials, production processes, supplied parts or other changes relating to the provision or composition of the goods & services. The Vendor shall refrain from making any such changes unless it has the Purchaser's explicit written consent, which shall not be withheld unless there are appropriate legal grounds. The Vendor shall provide the Purchaser with all information (e.g., operating instructions, warning labels, approval regulations) necessary for ensuring the delivery of defect-free products as defined in the Product Liability Act or other applicable product liability provisions. If the Vendor becomes aware of subsequent circumstances which could cause a product defect as defined in the Product Liability Act or other applicable product liability provisions, it shall immediately send the Purchaser written notification and reimburse all costs and expenses associated with the recall of defective products (if applicable). Limitations of any kind on the Vendor's obligations under the Product Liability Act or other applicable product liability provisions, or limitations of any kind on the Purchaser's entitlement to assert damages under the Product Liability Act or other applicable product liability provisions, shall be deemed invalid. If claims are asserted against the Purchaser by a third party, the Vendor shall indemnify the Purchaser against such damages and claims. The Vendor shall provide the names of the manufacturer or upstream supplier of the defective product if at any time asked to do so by the Purchaser.

## **12. Protective Rights of Third Parties**

Regardless of culpability, the Vendor shall be liable for ensuring that the goods & services or the use thereof do not directly or indirectly infringe patents, utility models, brands, trademarks, trade names, registered design/designs, copyright or other protective rights of third parties of any kind, including but not limited to commercial and/or business secrets and know-how. The Vendor shall indemnify the Purchaser against damages, claims or execution asserted by third parties (including all associated costs and expenses, in particular the costs of legal action), and shall reimburse the Purchaser for all associated and resulting damages, costs, expenses and disadvantages and/or other consequences; this applies in particular to matters relating to or arising from indirect patent infringement.

## **13. Invoices; Payment; Offsetting and Assignment Prohibited**

Invoices shall be sent to the Purchaser by regular mail after the goods & services have been delivered/rendered; invoices shall not be enclosed along with the goods. Invoices shall show the complete order number and the order date. The invoices shall clearly show the shipping address and indicate whether the shipment was free of all charges or freight collect. Invoices for work performed shall show the number and date of the relevant wage statements and installation statements. If goods & services are supplied on a regular basis, invoices shall be generated at the end of the month and sent to the Purchaser no later than the 3<sup>rd</sup> of the month following provision of the goods & services. Invoices shall only be deemed proper if they comply with Austria's Value-Added Tax Act [*UStG*]. Invoices which contain material or arithmetic defects or errors shall not be payable. In such instances, the payment period shall not start to run until a corrected invoice has been received. The date of payment shall have no effect on the Vendor's warranty obligations. Payment shall not constitute acknowledgement that the goods & services are defect-free, and shall not waive warranty claims or damages claims. Advance payments shall remain stable in value, and shall be deemed aliquots of the total order value. The Purchaser reserves the right to perform current account netting. Unless agreed otherwise in writing, at the Purchaser's discretion, the following payment conditions apply: 14 days with 5% discount; 30 days with 3% discount; 60 days net, in all cases calculated based on the date on which a proper invoice was received.

The Purchaser is entitled to offset amounts which are payable by it or its affiliates against the Vendor or its affiliates, or to withhold said amounts. The Vendor shall refrain from assigning its claims against the Purchaser to third parties or arranging for them to be collected by third parties unless it has the Purchaser's written consent. Moreover, the Vendor is not entitled to offset its own claims against claims of the Purchaser.

## **14. Force Majeure**

If, due to force majeure (e.g., strike (including political strike), lockout, war, natural disaster or similar), the Purchaser or the Vendor or a subcontractor, supplier or other third party used by the Vendor is unable to provide the goods & services or part of the due obligations in a timely manner, the Purchaser is entitled to fully or partially withdraw from the contract or to demand provision of the goods & services or placed order or part thereof at a later date, without thereby establishing grounds for any Vendor claims.

## **15. Confidentiality; Drawings and Models**

The Vendor shall ensure that all technical and commercial information of the Purchaser of which it becomes aware as part of the contractual relationship is kept confidential. In particular, "confidential information" shall not be disclosed. The following in particular are deemed "confidential information," regardless of whether they relate to the Purchaser, its affiliates or its customers/business partners: any information, documents, drawings, data, data on electronic storage media, processes and process steps, compositions, formulae, machinery, systems, templates, objects, market and marketing information, technical and commercial information, commercial and business secrets, financial information, business models and business processes or other information that merits protection which, before or after the drawing up of these T&Cs of Purchase, are knowingly or unknowingly handed over to the Vendor by the Purchaser in written, graphical, oral, visual, or electronic form, or via the sending of a product or product sample, during a company visit or in any other way, or which pass into the Vendor's realm of control and/or of which it becomes aware, or any copies or other information derived therefrom. In particular, information or work outcomes which arise in connection with provision of the goods & services, regardless of whether they were created by the Purchaser, Vendor and/or a third party (Section 4), shall be deemed confidential

information. The following is not deemed confidential information: information which in its totality and in the precise structure and composition of its components was, as of the date on which the information changed hands under this contract, demonstrably already generally known to or easily accessible by individuals in circles that customarily deal with such types of information. The Purchaser's prior written permission is required in each individual case for any forwarding of confidential information for use for own purposes or a third party's purposes, regardless of whether all or part of the information is used, whether it is modified or processed, or is part of other information. Furthermore, the Vendor shall only use the confidential information in connection with provision of the goods & services, and during and after the end of order fulfillment shall not use it for its own purposes or for other parties' purposes, and shall handle the information in a manner that allows the Vendor to return it after order fulfillment. In particular, the Vendor shall not attempt to obtain any findings or draw any conclusions from the confidential information, nor trace back to the information which underlies it, nor to analyze it through observation, assessment, dismantling or testing. This also applies to scientific publications. Orders and work relating to them shall also be deemed confidential information and therefore kept confidential.

All specifications, drawings and other technical documents or attachments to enquiries or orders (e.g., plans), including materials made available per Section 8 and any production resources (e.g., tools) which are handed over or made available to the Vendor by the Purchaser in connection with the drawing up or fulfillment of the contract, shall remain the property of the Purchaser, and along with specifications, drawings, plans, detailed drawings, production materials and other technical documents and tools (hereinafter jointly referred to as "documents") shall be used by the Vendor for the actual purpose of the contract with the Purchaser and not for any other purposes, and shall not be duplicated or made available to third parties. Upon request, these documents and the confidential information along with all excerpts and duplicates shall be immediately surrendered to the Purchaser, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

The Vendor shall refrain from using its knowledge of the confidential information to assert any rights relating to protective rights applications, and in particular shall refrain from asserting rights based on prior use. As stipulated in Section 16, all work outcomes and documents which are generated or produced based on confidential information of the Purchaser, including the jointly prepared specifications sheets, shall become the property of the Purchaser when created and shall be marked as the property of the Purchaser. Production materials, in particular tools, templates, technical devices etc. which the Purchaser has made available to the Vendor shall be marked as the property of the Purchaser and are subject to the confidentiality provisions and prohibitions on use set forth in Section 15. These documents and production materials shall be immediately surrendered to the Purchaser upon demand, any copies shall be destroyed, any backup copies or recordings on electronic storage media shall be deleted and written notification to that effect shall be sent immediately.

The Vendor shall ensure that all documents and materials which might contain confidential information of the Purchaser are safeguarded and protected against access by third parties.

The Vendor requires explicit written permission if it wishes to indicate or draw attention to the business relationship with the Purchaser in advertising materials or publications of any kind.

If there are grounds for suspecting infringement of these confidentiality provisions, the Vendor shall bear the burden of proof for demonstrating that the confidential information was already known to the general public on the contract date or was disclosed without its involvement or responsibility.

Vis-a-vis the Purchaser the Vendor is jointly and severally liable along with any third party to whom confidential information was disclosed by the Vendor, or by whom confidential information was disclosed to the Vendor, for any infringement of the confidentiality provisions herein.

The Vendor hereby acknowledges that infringement of the Vendor's confidentiality obligations could cause major or irreparable damage, for which statutory damages might be inadequate. For each case and for each day of infringement of this contract by the Vendor and/or a person to whom the Vendor has disclosed

the information in question, the Vendor shall pay the Purchaser a contractual penalty of EUR 50,000, regardless of further claims or legal remedies. The defense that a series of infringements should be treated as one continuous infringement is barred. Insofar as legally permissible, the contractual penalty shall not be subject to judicial intervention or assessment for appropriateness and shall be independent of the damages caused.

The Purchaser shall not be liable for ensuring that the use of the confidential information does not infringe the intellectual property rights, copyright and/or other rights of third parties, and/or for damages caused to the Vendor or a third party. The Purchaser is completely at liberty to utilize and make use of the confidential information in any manner it wishes.

Section 15 herein shall continue to apply after the contractual relationship has been ended or has ceased.

## **16. Work Outcomes; Granting of Rights**

The Vendor shall not acquire any rights based on these T&Cs of Purchase unless they are granted explicitly. In particular, the Purchaser retains the sole rights to and exclusive ownership of all intangible and tangible items which are made available to the Vendor (if applicable) in connection with provision of the goods & services. They may only be used by the Vendor during the period in which it has a business relationship with the Purchaser and only in order to provide the goods & services to/for the Purchaser, and otherwise shall be subject to the confidentiality provisions in Section 15.

Only the Purchaser is entitled to the documents and work outcomes (including tools) (hereinafter jointly referred to as "work outcomes") which are created in connection with the contract and to exploit them, and as of the creation date they shall be transferred, passed and granted to the Purchaser.

The Purchaser shall be notified regarding any work outcomes immediately after their creation. As of the creation date, the Vendor shall transfer to the Purchaser sole ownership of and exclusive intellectual property rights for the work outcomes to the full legally permissible and transferable extent, in particular the sole right to apply for protective rights or invoke priority rights, and those rights shall pass to the Purchaser accordingly. In addition, the Vendor shall grant the Purchaser exclusive utilization rights to the work outcomes when they are created. In the case of copyright-protected outcomes, the Vendor hereby irrevocably grants the Purchaser the exclusive rights to utilize the work outcomes without chronological, material or geographic limitation based on all currently known or future types of exploitation, and in particular to duplicate, disseminate, lease and lend, transfer or send them via wireless or wired connection, or present, show, or display them and make them available, and to transfer all rights to the work outcomes to third parties gratis or against payment, or to grant sublicenses, and in doing so permit the third parties to utilize the work outcomes to the same extent. Furthermore, the Purchaser is entitled to adapt the work outcomes itself or have them adapted by third parties and to exploit the adapted results thereof to the same extent or to transfer them to third parties.

Moreover, only the Purchaser is entitled to exercise disposal over, utilize or decide on the use of created information which is ineligible for IP protection, including business and commercial secrets.

The Vendor therefore hereby confirms that the Vendor no longer holds those rights. No separate remuneration shall be due; all transfers and/or granting of rights shall be deemed fully satisfied by the agreed remuneration for the goods & services, regardless of the type and scope of use and exploitation by the Purchaser. Therefore, the Vendor hereby attests that in particular it does not have any prior use rights to the respective work outcomes. Based on and in return for the aforementioned remuneration, the Vendor conclusively and irrevocably waives all claims and information rights arising from inventions and all other protective rights relating to the work outcomes.

Applications for protective rights shall be made by the Purchaser at its own discretion and maintained by the Purchaser in its own interest.

The Vendor shall ensure that the Vendor has and holds all necessary rights to ensure that ownership and/or transferable rights, including intellectual property rights to the work outcomes as set forth herein,

can be completely and conclusively transferred to the Purchaser with legal effect, and that exclusive utilization rights to the work outcomes can be granted. This applies in particular to rights arising from employee inventions and/or rights to outcomes arising from work and labor contracts. To accomplish that, before any information about a contractual project is handed over, and before the relevant individuals on the Vendor side who will perform work relating to the goods & services actually become involved in the contractual project, the Vendor shall draw up the necessary rights transfer declarations with those individuals.

Insofar as the Vendor holds existing protective or other rights which could prevent the Purchaser and/or its customers/business partners from exercising its rights under these T&Cs of Purchase or using the goods & services in question, the Vendor, at no charge, hereby grants the Purchaser the right of joint use, which shall be worldwide, perpetual, continuous, unlimited (and in particular shall be usable by the Purchaser in connection with further developments and/or improvements), and applicable to customers and business partners of the Vendor, and shall ensure that the right of joint use is also granted by third parties.

## **17. Shipping**

The goods shall be packaged properly in a manner suitable for shipping and prepared for shipment. Unless agreed otherwise in writing in a given case, the following provisions apply to shipping:

- a) The goods shall be shipped solely at the Vendor's cost and risk, to the location specified by the Purchaser. The Vendor shall also bear the risk of accidental loss.
- b) During shipping, the applicable shipping regulations shall apply, and shipping methods which are most economical from the Purchaser's standpoint shall be taken into account.
- c) The department, reference number, order number and order date shall be shown on all letters, delivery notes, dispatch notes, invoices and similar documents. Each order shall be handled separately throughout written correspondence.
- d) The Vendor's delivery notes shall indicate in particular the following:
  - Purchaser's order number and order item
  - Miba material number (if shown on the order)
  - manufacturer
  - complete type designation
  - volume and metric sales unit
  - any quality assurance documents which accompany the goods
  - delivery lot, batch or date code (if applicable)
  - country of origin and customs tariff number
- e) The department, reference number, order number and order date shall be shown on the rear of the consignment note or detachable portion of the express delivery or postal address label. The exact consignment note address indicated by the Purchaser shall apply. The Vendor shall be liable for damages, costs and expenses incurred by the Purchaser as a result of an inaccurate declaration and/or address.
- f) If the goods are handed over to a freight forwarder, on the day of dispatch the Vendor shall send the Purchaser separate written notification indicating that handover has taken place and the handover date (dispatch note); invoices shall not be deemed dispatch notes.
- g) The Vendor shall be liable in full for damages, costs and expenses (demurrage costs, shunting costs, stock transfer costs etc.) incurred by the Purchaser due to the Vendor's failure to comply with the above provisions. Any shipments which for such reasons cannot be accepted shall be stored at the Vendor's cost and risk until the Purchaser can facilitate handling by sending proper documents. The Purchaser is entitled to immediately check the contents and status of any such shipments, without thereby establishing grounds for an obligation to perform inspections or send defect reports.
- h) Any separate shipping instructions issued by the Purchaser shall be followed in all instances; the costs of damages incurred by the Purchaser due to failure to comply with shipping regulations shall be borne by the Vendor.



## **18. Cancellation of Contract**

Regardless of any other grounds for ending the contract set forth in these T&Cs of Purchase, the Purchaser is entitled to terminate all contractual relations with immediate effect if there are significant grounds. The following in particular shall be considered significant grounds:

- a) Bankruptcy proceedings are opened for the Vendor's assets, or opening of bankruptcy proceedings is rejected due to lack of assets;
- b) There are circumstances which make the proper provision of the goods & services impossible;
- c) The Vendor itself or a person used by it to provide the goods & services infringes major contractual provisions or confidentiality obligations;
- d) There is a change in the direct or indirect legal or commercial means for exercising control at the Vendor (change of control);

The ending of all or individual contractual relations shall not affect the validity of Sections 10, 11, 12, 15, 16, 21, 22 and 23, and those Sections shall continue to remain in effect after the ending of contractual relations. The transfer and granting of rights as described in Section 16 explicitly also apply to interim outcomes (if applicable) at the end of a contractual relationship.

## **19. Consent to Transfer of Contractual Relationship**

The Vendor hereby agrees that the Purchaser may transfer the contractual relationship as a whole to an affiliate of Miba AG (independently of the percentage shareholding). In such instances, based on written notification the affiliate specified by the Purchaser shall take over all obligations and claims arising from the legal relationship and shall assume all of the Purchaser's organizational and other rights. However, the Purchaser shall continue to be jointly and severally liable to the Vendor for obligations arising from the contractual relationship, including payment of the remuneration.

## **20. Duties and Charges**

Unless agreed otherwise in writing in a given case or stipulated otherwise in applicable legislation, all duties and charges which are payable based on the goods & services shall be borne by the Vendor. This also applies if the Purchaser has to obtain an international import certificate in order to import the goods in question.

## **21. Compliance**

The Vendor shall comply with the Miba Code of Conduct, which is available on the Internet at:

[http://www.miba.com/fileadmin/user\\_upload/A\\_Miba\\_Code\\_of\\_Conduct\\_Broschure\\_EN\\_060318.pdf](http://www.miba.com/fileadmin/user_upload/A_Miba_Code_of_Conduct_Broschure_EN_060318.pdf)

The Miba Code of Conduct is incorporated by reference into the contract between the Vendor and the Purchaser. The Vendor hereby declares that it is familiar with the Miba Code of Conduct and that it shall ensure that its employees and subcontractors comply with it. The Vendor shall immediately notify the Purchaser regarding any activities on the part of its employees or subcontractors which constitute an infringement of the Miba Code of Conduct. The Vendor shall help the Purchaser to obtain information relating to any infringement of the Miba Code of Conduct.

Furthermore, the Vendor hereby declares that it will comply with all legislation, regulations and other standards of the export country, import country and destination country which are applicable as of the relevant date. The Vendor shall ensure that the aforementioned requirements are also forwarded to sub-suppliers.

In particular, the Vendor hereby confirms that as a matter of principle the goods & services are not subject to any foreign trade constraints. If necessary, the Vendor shall provide relevant information regarding the goods if asked to do so by the Purchaser. The Vendor hereby assures the Purchaser that it will always fully comply with all export provisions currently applicable to the contractual goods and/or services and their export and/or re-export, in particular with Council Regulation (EC) No. 428/2009 regarding a Community regime for the control of exports, transfer, brokering and transit of dual-use items (as amended) and the US Export Administration Regulations (EAR), to the exclusion of any responsibility in this regard.

Any violation of these export provisions or the Miba Code of Conduct shall entitle the Purchaser to immediately terminate all existing contracts with the Vendor if there are significant grounds.

Moreover, if the Vendor is listed on an EU or US sanctions list, the Purchaser reserves the right to terminate all business relations, payment flows and performance with immediate effect. Furthermore, in the event of infringement of any of these compliance provisions, the Vendor shall comprehensively indemnify the Purchaser against resulting damages and claims.

The Vendor shall ensure that in its commercial documents it immediately provides the Purchaser with separate notification regarding any permit requirements or constraints on the (re-)export of its goods under Austrian, European or US export and foreign trade regulations and regarding the export and foreign trade regulations in the country of origin of its goods, and in the case of goods requiring permits shall provide the following information in a timely manner prior to initial delivery:

- Miba material number
- description of goods
- all applicable export list numbers including the Export Control Classification Number (ECCN) per the U.S. Commerce Control List
- place of origin of the goods under trade policy
- customs tariff number (HS code)

The Vendor shall immediately notify the Purchaser regarding any changes in permit requirements for goods supplied to the Purchaser which are a consequence of technical or regulatory changes or official decisions.

## **22. Place of Fulfillment; Place of Jurisdiction**

The place of fulfillment for both parties is the location specified by the Vendor on the order confirmation.

The sole place of jurisdiction for disputes arising from or in connection with this contract is the court with subject-matter jurisdiction for Linz, Austria. However, the Purchaser, at its own discretion, is also entitled to assert claims against the Vendor before the court with subject-matter jurisdiction for the Vendor's headquarters.

## **23. Applicable Law**

This contract, including the questions of whether it is legally valid and/or void and its advance effects and aftermath, are subject to Austrian law only, to the exclusion of conflict of law provisions and UN CISG.

## **24. Severability**

If a provision of these T&Cs of Purchase is invalid or inapplicable, this shall not affect the validity or applicability of the other provisions. If a provision is invalid or inapplicable, it shall be replaced by one which in terms of commercial purpose approximates as closely as possible to the invalid or inapplicable provision. The same applies to contractual gaps.

## **25. Written Form**

In order to be valid, any changes or amendments to these T&Cs of Purchase or other contractual agreements between the Purchaser and the Vendor shall be carried out in writing. The same applies to deviations from the requirement regarding written form.