

# General Terms and Conditions of Sale & Delivery - US

## 1. Applicability.

These terms and conditions of sale & delivery (these "Terms") are the only terms that govern the sale of the goods or services (the "Goods") by the entity to which the purchase order has been issued (the "Seller") to the applicable buyer (the "Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of that contract shall prevail to the extent they are inconsistent with these Terms. The accompanying quotation, confirmation of order, and/or invoice (the "Order Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. A contract with the Seller does not arise until a written Order Confirmation has been sent or the Seller has confirmed the order in writing. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. If notwithstanding the foregoing, Seller's quotations for Goods are deemed to be an offer, and Buyer's order is deemed to be an acceptance of Seller's offer, then acceptance of Seller's offer is expressly limited to these Terms. Orders placed by the Buyer which do not indicate an acceptance deadline shall be binding upon the Buyer for at least 30 days.

## 2. Delivery.

The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

## 3. Quantity and Description.

If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Order Confirmation adjusted pro rata. The Goods or services to be supplied shall be defined by the description in the Seller's Order Confirmation. Where a part number is not specified by the Buyer in its order, but a dimensional or other description is provided, the Seller shall supply the closest equivalent part from the products manufactured by the Seller.

## 4. Tooling and Production Site.

Unless otherwise agreed, the Seller shall provide the machinery, equipment, tools, templates, molds, measuring equipment, accessories, casting molds, models and other items (the "Seller's tools") that are required to provide the Buyer with the Goods, and shall keep them in good condition and, if necessary, replace them. Buyer shall bear the costs of providing, maintaining and replacing the Seller's tools. The Seller may use any such tooling, machinery or equipment to manufacture products for sale by the Seller to third parties. The Seller may shift the production, manufacture or assembly of the Goods to a different site which may be operated by the Seller's parent company or an affiliate of Seller.

## 5. Shipping Terms and Delivery.

Delivery shall be made FCA (Incoterms 2010), Seller's plant (the "Delivery Point"). Subject to Section 18 hereof, delivery

shall be made by the Seller in accordance with the terms of the Order Confirmation. The Seller may make partial deliveries.

**6. Title and Risk of Loss.**

Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

**7. Price.**

Buyer shall purchase the Goods from Seller at the prices set forth in Seller's published price list in force on the date that Seller accepts Buyer's purchase order (the "Prices"). If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices. All Prices are exclusive of any applicable sales, use and excise taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

**8. Payment Terms.**

Buyer shall pay all invoiced amounts due to Seller within 30 (thirty) days from the date of Seller's invoice (the "Due Date"). Buyer shall make all payments hereunder in US dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly from the Due Date. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer shall not withhold payment of or set-off any amounts due and payable to the Seller because of any claim against or dispute with Seller.

**9. Software.**

The Term "Goods" shall include any software, computer application or source code supplied by Seller.

**10. Limited Warranty.**

(a) Unless otherwise stated in the Order Confirmation, Seller warrants to Buyer that for a period of twelve months from the date of shipment of the Goods ("Warranty Period"), the Goods will conform to Seller's published specifications in effect as of the date of manufacture (the "Specification Warranty"). Seller reserves the right to change its published specifications at its discretion. To the extent the Goods include software, Seller warrants that the software meets the software specifications which were supplied and confirmed by the Seller, and that as of the delivery date the software is free of malware and/or computer viruses (the "Software Warranty"). No further properties shall be assumed, nor are they promised. Buyer acknowledges that the software may not run properly on all systems or platforms.

**(b) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS. ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, IS EXPRESSLY DISCLAIMED AND EXCLUDED.**

(c) The Seller shall not be liable for a breach of either the Specification Warranty unless: (i) Buyer gives written notice of

the defect, reasonably described, to Seller within fifteen days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity, after receiving the notice, to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective. Buyer shall not return defective goods without notice to and the consent or request of Seller and return of such goods shall not constitute the notice required under this Section 10.

(d) The Seller shall not be liable for a breach of the Specification Warranty if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; (iii) Buyer alters or repairs such Goods without the prior written consent of Seller; or (iv) damage is caused by alteration, misuse, overloading, improper handling or installation, neglect, accident, improper or inadequate maintenance, poor mating parts, foreign particles or materials, failure of other components, or any combination thereof.

(e) Subject to Section 10(c) and Section 10(d) above, with respect to any such Goods during the Specification Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(f) The Seller shall not be liable for a breach of the Software Warranty resulting from (i) defects in Buyer's computer systems, applications or software, including viruses or malware; (ii) improper use; (iii) improper or defective storage media; (iv) improper operation; (v) incompatible software, operating system, or hardware of Buyer; or (vi) unauthorized modification of the software by Buyer.

(g) Seller shall not be liable for the costs of parts or labor arising out of the assessment, inspection, removal, or re-installation of the Goods, including defective Goods.

(h) THE REMEDIES SET FORTH IN THIS SECTION 10 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND CONSTITUTE SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 10(a).

## **11. Limitation of Liability.**

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST TIME, OPPORTUNITY OR PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY EITHER PARTY, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, NEGLIGENCE, STRICT/PRODUCT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXCEED THE PRICE OF THE GOODS AS SET FORTH IN THE ORDER CONFIRMATION.

(b) Seller shall not be liable for costs or expenses of Buyer relating to any recall or field inspection or replacement program initiated solely by Buyer. The Seller shall not be liable for any loss to real or personal property of Buyer or of any third party. The Seller shall not be liable to Buyer with respect to any third party claim for bodily injury or death absent a judicial finding of gross negligence or intentional conduct on the part of Seller.

## **12. Compliance with Law.**

(a) Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

(b) Buyer warrants that the Goods or services provided pursuant to Buyer's purchase order are not subject to any foreign trade restraints and that Buyer is not subject to any export embargo, sanction list, or other export prohibition or restriction with respect to the Goods. Buyer shall comply with all export and import laws of the United States, including without limitation, U.S. Export Administration Regulations (EAR) and International Trafficking In Arms Regulations (ITAR), and of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Seller reserves the right to refuse to perform this contract, without liability of any kind to Buyer, in the event that (i) it appears that import or export laws may be violated; and (ii) Buyer cannot demonstrate that it is in compliance with such laws. Violation of any United States or other country's applicable export law shall be grounds for Seller to terminate any or all contracts with Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import or export clearance. Buyer agrees to hold harmless, defend and indemnify Seller with respect to any investigation, subpoena, demand, fine, penalty, cost, expense, claim, governmental action, or suit made, received, imposed or commenced against Seller as a result of Buyer's failure to comply with applicable laws and regulatory requirements. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.

(c) Buyer shall also comply with the Miba Code of Conduct found 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 provisions of which are incorporated herein by reference and made part of these Terms. Buyer acknowledges that it has reviewed Miba's Code of Conduct, that Buyer's employees, subcontractors and suppliers are required to follow such Code, and to avoid any violation thereof, and that Buyer will immediately report to Seller any action by any employee or agent of Buyer which constitutes a violation of or attempt to violate such Code of Conduct. Violation by Buyer of Miba's Code of Conduct shall be cause for cancellation, termination or rescission of the Seller's purchase order or the parties' contract.

### **13. Termination.**

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to insolvency, bankruptcy, receivership, reorganization or makes an assignment for the benefit of creditors.

### **14. Waiver.**

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

### **15. Confidential Information.**

All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, manuals, instructions, data, software, source code, technology, trade secrets, know how, business or financial information, customer lists, formulae, scientific or engineering data, pricing, discounts or rebates (hereinafter "confidential information"), disclosed by Seller to Buyer prior to purchase or at any other time, whether disclosed orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," shall be kept confidential by the Buyer. Such confidential information is disclosed for the use of Buyer only and solely for Buyer's use in determining whether to place an order and/or in Buyer's use of the Goods following purchase, and for no other purpose. Seller's confidential information may not be disclosed to any third party or copied at any time or for any reason unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all

confidential information received from Seller and the Buyer shall delete any stored electronic versions or copies thereof and certify such deletion to Seller. Seller shall be entitled to damages and injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure, unless previously disclosed by the Seller as confidential information; or (c) rightfully obtained by Seller on a non-confidential basis from a third party. Seller makes no representations or warranties, either express or implied, concerning its confidential information, except that Seller represents that it has the right to disclose such confidential information. This Section 15 shall not supersede any separate confidentiality or non-disclosure agreement signed by the parties.

## **16. Data Protection**

(a) If the Buyer receives or obtains personal data or identifiers from, for or on behalf of the Seller, it shall comply with applicable state and U.S. privacy or other laws relating to the protection, handling, and storage thereof. Where applicable, the Buyer shall comply with Austria's Data Protection Act [DSG] (as amended) and the EU General Data Protection Regulation, and, where necessary, draw up a controller/processor contract as defined in Art. 28 of the General Data Protection Regulation. Where required by applicable law, the Buyer shall utilize the contract templates issued by the European Commission to provide a suitable guarantee as defined in Art. 46 Paragraph 2 Parts c and d of the General Data Protection Regulation. The Buyer shall indemnify, defend and hold harmless the Seller with respect to any claim against Seller arising out of or related to the Buyer's failure to comply with applicable privacy laws or regulations.

(b) The Buyer shall provide the Seller with immediate notice of any breach of the Buyer's computer network, system, servers, or data that results in the copying, theft, ransom, disruption, corruption, or lack of access to Seller's confidential information or other data disclosed or provided by the Seller or that otherwise involves or effects this Agreement. The Buyer represents that it has in place reasonable protections and security measures against cyber-attack, intrusion, and infiltration.

## **17. Intellectual Property.**

(a) The provision of information by Seller or the purchase of Goods from Seller does not confer upon Buyer any right, permission or license of any nature in Seller's intellectual property or the intellectual property of Seller's affiliates. No rights in, or license to, Seller's intellectual property including, without limitation, Seller's patents, trademarks, copyrights, industrial designs, technology, know how, or trade secrets, are conveyed, transferred or granted upon the Buyer absent an express written agreement of the Seller or as otherwise stated in this Section 17. Nothing in this Section 17 should be construed as Seller's consent to Buyer's modification or redesign of the Goods. Buyer agrees that it shall use the goods only for the application contemplated by this Agreement and Seller grants Buyer only the right to use the Goods for such application and purpose. Buyer agrees that it will not attempt, or assist any third party in attempting, to reverse engineer the Goods. The Buyer shall not modify the appearance of the Goods in any way and shall not remove or modify the Seller's brand name or other identifying marks. Buyer shall not use the Seller's trademarks, trade names, trade dress, service marks, or logo in the Buyer's advertising or otherwise without the prior written permission of Seller. Buyer shall not represent to third parties that the Goods are suitable or available for use in any application other than the specific use and application advertised or specified by the Seller. Manuals, instructions, and user documentation, if provided by Seller, shall be used only to facilitate proper installation, maintenance and use of the Goods. If the Goods include software, computer programs, applications or source code, Buyer shall not acquire any of Seller's intellectual property rights thereto and Buyer may use such items only to facilitate use or operation of the goods and only for the period of use of the Goods. If it is necessary for the Seller to utilize the Buyer's intellectual property to provide the Goods to the Buyer, the Buyer hereby grants to the Seller usage rights and license thereto, which shall be global, non-exclusive, gratis, non-transferable, and sub-licensable to subcontractors, but only to the extent necessary to provide the Goods to the Buyer and for no other purpose.

(b) Unless otherwise set forth in a separate, written agreement, the Buyer agrees that Seller is entitled to all intellectual property rights and exploitation rights in the Goods that arise out of Buyer's purchase or any examination, testing, modification, redesign and/or use of the Goods, including the rights to any and all improvements of the Goods, and Buyer agrees that all such rights will vest in Seller automatically to the fullest extent allowed under applicable law and that Buyer will not perform any acts contrary to, or hostile to, Seller's rights. Pursuant to this subsection (b), the Buyer agrees to perform any acts required by Seller under applicable law to register or record any assignment of such rights to Seller.

However, in such event, the Seller shall bear the costs of any fees or expenses necessary to secure the Seller's intellectual property rights or exploitation rights that arise under the terms of this subsection and the Seller hereby grants the Buyer a non-exclusive, non-transferable license to such intellectual property rights or exploitation rights, but only as applicable to the Goods covered in this subsection.

(c) Absent separate written agreement, the Buyer agrees that all intellectual property rights, including exploitation and use rights, in and to know how, technology, discoveries, findings, developments, improvements and inventions which arise out of or in connection with the Seller's performance and which relate to the Goods, including Goods supplied on the basis of the Buyer's specifications or other contribution of the Buyer thereto, shall immediately vest in and become the property of the Seller and shall automatically pass to the Seller, so that the Seller becomes the sole and exclusive rights-holder and beneficial owner thereof.

(d) In the event that the Goods are manufactured by Seller to Buyer's specifications and/or drawings, Buyer shall hold harmless, defend and indemnify Seller from and against any and all notices, claims, suits, actions, proceedings, damages, costs, expenses (including reasonable attorneys' fees) arising out of or relating to alleged infringement of any trademark, trade dress, copyright, patent, trade secret or other intellectual property right.

#### **18. Force Majeure.**

The Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or inability or delay in obtaining supplies of adequate or suitable raw materials, or telecommunication breakdown or power outage. In the event of delay caused by an event described in the Section, the delivery or performance date shall be extended without penalty to Seller for a reasonable period of time required to resolve or recover from the event. Seller shall as soon as practicable notify Buyer of the occurrence of such an event and advise Buyer of the anticipated length of delay in delivery. If delivery is expected to be delayed for a period of more than thirty (30) days beyond the original delivery or performance date, either party may cancel that part of the shipment so effected, provided that the cancelling party provides written notice of such cancellation to the other party within fourteen (14) days following Seller's notice of the event.

#### **19. Assignment.**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Seller may transfer or assign performance of this Agreement to a subsidiary of Miba AG or affiliate of Seller upon written notification to Buyer, in which event, such subsidiary or affiliate shall assume all rights, duties and obligations of Seller hereunder.

#### **20. Relationship of the Parties.**

Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **21. Audits.**

No audits of the Seller or its suppliers shall be permitted without the Seller's prior written permission.

## **22. Time.**

Time is of the essence. Unless otherwise provided, "days" shall mean calendar days.

## **23. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

## **24. Amendment or Modification.**

These Terms may only be amended or modified in a writing signed by the authorized representatives of both Seller and Buyer. No verbal amendments or modifications of these Terms shall be enforceable. The conduct of the parties or their custom, usage, or dealings shall not be deemed to have amended or modified these Terms.

## **25. Governing Law; Venue; Jurisdiction.**

(a) The validity, construction and effect of the provisions of the parties' contract, these Terms, Buyer's purchase order, and the purchase and sale herein contemplated shall be governed by and construed according to the laws of the state of Seller's location as shown on Seller's order confirmation (the "Forum State"), without resort to such state's conflict of law rules. The parties hereto agree that the United Nations Conventions on Contracts for the International Sale of Goods shall not apply to this contract.

(b) Any legal suit, action or proceeding arising out of or relating to Buyer's purchase order, Seller's performance, or these Terms shall be instituted in the United States District Court or the competent State Court nearest Seller's location in the Forum State and each party irrevocably consents and submits to the exclusive personal and subject matter jurisdiction of such courts in any such suit, action or proceeding and expressly waives any objection thereto.

## **26. Notices.**

All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address as may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

## **27. Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## **28. Survival.**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Compliance with Laws, Confidentiality, Governing Law, Jurisdiction and Survival.