

# Terms and Conditions

## Microstaxx® Ltd. Information and Communications Solutions

Status as of 1<sup>st</sup> January 2019

### 1 Jurisdiction

1.1 Our Terms and Conditions shall apply to legal relations with enterprises, legal entities governed by public law and special trusts under public law.

1.2 Our deliveries, services and offers are made solely on the basis of these Terms and Conditions. Differing, conflicting or supplementary General Terms and Conditions shall not, even upon knowledge thereof, become part of any contract, unless their application is expressly agreed to in writing.

1.3 Oral ancillary agreements do not exist.

### 2 Offers - Conclusion of Contract

2.1 Our offers are always subject to confirmation and non-binding. Technical and design deviations from descriptions and information provided in brochures, catalogues or written documents, as well as changes in the model, construction and material as a result of technical progress, are reserved within reasonable limits. Technical changes, improvements and adjustments in line with the latest developments in science and technology, as well as improvements in the construction and choice of material, are considered reasonable. All information concerning quantity, size, color and weight are subject to the tolerances usual in trade.

2.2 If the order placed by a customer can be qualified as an offer pursuant to § 145 BGB (German Civil Code), we have the right to accept it within two weeks of receipt, if no longer period is stated in the order. Acceptance of the order shall either be expressed in writing or by delivery of the goods to the customer. We have the right to decline acceptance of an order, e. g. after checking the customer's creditworthiness.

2.3 The conclusion of the contract is subject to correct and timely delivery by our suppliers. This only applies if we are not at fault for failure to deliver, in particular if we have concluded a congruent hedging transaction with the supplier. The customer shall be informed about the non-availability of the service immediately. The consideration shall be reimbursed immediately.

2.4 Our offers and all enclosures (in particular pictures, images, plans, concepts e.g. concerning networks or IT structures and calculations) shall be treated confidentially at all times. The right of ownership and copyright of above-mentioned offers and enclosures lies with us. Disclosure to third parties is only permitted with our prior written consent. The confidentiality obligation shall not apply to information which the customer had prior knowledge of, or to information in the public domain which is unrelated to contractual violation by the customer. The customer is solely liable if by executing his/her order third parties' rights, in particular intellectual property rights, are violated due to documents he/she provided.

### 3 Prices - Terms of Payment

3.1 Unless otherwise agreed, all prices are quoted ex warehouse, Munich.

3.2 All prices are subject to VAT at the statutory rate on the day of invoicing, plus packaging and shipping costs.

3.3 Unless otherwise agreed, our invoices are due immediately upon receipt, without reduction. During the period of delayed payment the customer must pay interest on the debt at a rate of 8% above the base rate. We reserve the right to prove and claim a higher loss caused by delay.

3.4 If the customer is granted credit based on false statements or if their economic situation deteriorates after conclusion of the contract, we are entitled to claim the payment due immediately or demand security.

3.5 The customer shall only be entitled to offsetting rights if his counterclaims are declared legally valid, are undisputed or are acknowledged by us. The customer shall only exercise the right of retention, if their counterclaim is based on the same contract.

3.6 The customer is obligated to reimburse us for all damages incurred by the non-execution of the contract / contracts, including loss of profits. If the legal conditions necessary for withdrawal from the contract due to default of payment apply and we make use of our right of withdrawal, we are entitled to claim damages on the basis of default from the customer, generally amounting to 15% of the net invoice amount agreed upon. We shall reserve the right to enforce a claim for any actual higher damage. In this case, the generalized damage caused by delay shall be added to this further damage caused by delay. The customer is entitled to prove that no damage or lesser damage occurred.

3.7 The client undertakes to bear all costs and expenditure connected with the recovery of the payment and must bear, in particular, the charges for the collection or other costs necessary for an appropriate prosecution.

### 4 Delivery Period, Transfer of Risk, and Delivery

4.1 The specification of delivery times is not binding, unless otherwise agreed. The beginning of the indicated delivery period presupposes the timely and proper fulfillment of all obligations to cooperate on the part of the customer, and the fulfillment of all essential contractual and payment obligations. The exception of the unfulfilled contract remains reserved.

4.2 The specification of delivery dates and deadlines is subject to correct and timely delivery by our suppliers. This only applies if we are not at fault for failure to deliver, particularly if we have concluded a congruent hedging transaction with our supplier. The customer shall be informed about the non-availability of the service immediately. Delivery dates and deadlines shall always be agreed upon in writing. Subsequent changes and additions requested by the customer shall result in an appropriate extension of the delivery time. We are not responsible for the aforementioned circumstances, if they occur during an already existing delay.

4.3 The risk of accidental loss / accidental deterioration of the goods passes to the customer as soon as the consignment is handed over to them or in the case of sale by dispatch, with the transfer of the merchandise to the forwarding agent or other parties authorized for shipment.

4.4 Any insurance of the goods against transport damage, transport loss or breakage shall be taken out exclusively at the written request of the customer and he alone shall bear such cost.

4.5 We are entitled to make partial deliveries, to a reasonable extent. In that regard, the delay of a partial delivery does not justify refusing acceptance of other partial deliveries.

### 5 Default of Acceptance on the Part of the Customer

5.1 If the customer is in default of acceptance, we are entitled to claim the damage incurred by us, including any additional expenses. In this case the risk of accidental loss / accidental deterioration of the object of the contract passes to the customer at the time of default of acceptance on the part of the customer.

5.2 If the legal conditions necessary for withdrawal from the contract due to default of acceptance on the part of the customer apply, and we make use of our right of withdrawal, we are entitled to claim damages on the basis of the default of acceptance from the customer generally, amounting to 15% of the net invoice amount agreed upon. The assertion of further claims for higher actual damages remains reserved. In this case, the generalized damage caused by default of acceptance shall be added to this further damage caused by default. The customer is entitled to prove that no damage or lesser damage occurred.

5.3 If the requirements set out in paragraph 5.1 are present, the risk of accidental loss or accidental deterioration of the goods passes to the customer as soon as they are in default of acceptance or debtor's delay.

### 6. Liability for Defects

6.1 The limitation period for any claims arising from defects shall be one year from delivery.

6.2 If operating or maintenance instructions are not followed, changes to the products are made, parts are exchanged or consumables used which do not match the original specifications, any liability for defects shall be void, unless it is demonstrable that a defect did not occur due to improper use or interference.

6.3 The condition of the goods agreed upon shall also be deemed to include properties which a customer may expect as a result of information provided by the seller, and product descriptions provided, unless we are unaware of such statements and were not obliged to have had knowledge of such, or if they have been corrected at the time of conclusion of the contract, or they could not have influenced the purchase decision. Other statements by the manufacturer, in particular in advertising, do not constitute any additional contractual representation as to the characteristics of the goods.

6.4 We do not grant any guarantees in the legal sense. Manufacturer's warranties remain unaffected, as they are settled exclusively between the manufacturer and the customer.

6.5 The customer's claims for defects presuppose that they have properly complied their obligations of inspection, notification and rejection according to § 377 HGB (German Commercial Law Code). Obvious defects shall be reported immediately after receipt of delivery, hidden defects immediately after their discovery, each at the latest within 14 days after delivery and each in writing, including a detailed description of the respective defect.

6.6 The liability for defects is executed at our discretion by either remedying the defect or delivering a defect-free item. If such supplementary performance shall fail, the customer may always demand a reduction of the payment (reduction) or withdraw from the contract. In the event of a negligible breach of duty, in particular if the interference is insignificant with regard to quality, use, suitability for use, and value, the customer shall not have the right to withdraw from the contract.

6.7 In order to carry out the supplementary performance we can demand that the customer a) send us the defective part or device in order to be repaired, at our expense, or b) keep the part or device available so that our authorized service technician can carry out repairs upon consultation with the customer. Paragraph 8.1 applies with regard to the customer's obligation to backup data.

6.8 In the event of the supplementary performance failing, the customer is entitled to withdrawal or reduction at his discretion.

6.9 We are liable under the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or agents. Insofar as we are not charged with intentional breach of contract, the liability for damages is limited to predictable, typically occurring damage.

6.10 We are liable under the statutory provisions if we culpably violate a fundamental contractual obligation; however, in such case liability for compensation shall be limited to predictable, typically occurring damage.

6.11 If the customer is entitled to claim damages in lieu of performance, our liability shall be limited to compensation for predictable, typically occurring damages, also with regard to paragraph 6.8.

6.12 Liability for indirect damages and consequential damages shall be excluded unless we have violated any fundamental contractual obligation, or unless we, our executive employees or agents are reproached for intentional or grossly negligent breach of duty.

6.13 Liability for culpable injury to life, body or health remains unaffected; this also applies to mandatory liability under the Product Liability Act or other legally mandatory liability offenses.

6.14 Liability is excluded unless otherwise stipulated above.

### 7 Total Liability

7.1 Any further liability for damages other than provided in paragraph 6 - regardless of the legal nature of the asserted claim - is excluded. This applies in particular to claims for damages from faults in the conclusion of the contract (culpa in contrahendo), other breaches of duty or tortious claims for property damage pursuant to § 823 BGB (German Civil Code).

7.2 The restrictions stipulated in paragraph 7.1 also apply insofar as the customer demands compensation for useless expenditures instead of performance and compensation for damages.

7.3 Insofar as liability for damages on our part is excluded or restricted, this also applies with regard to the personal liability of our employees, workers, representatives and agents.

### 8 Data Backup and Assignment of Claims

8.1 If the customer commissions us for maintenance, installation, expansion or other work of any kind (also with regard to the Liability of Defects in paragraph 6) on hardware or software that store, record or process data, the customer must ensure that prior to the beginning of this work, a proper backup of all data is performed, in order to be able to reconstruct the data which existed prior to this work at any time. In case of loss of data, we shall only be liable for the typical overhead that is required for the restoration of data if a proper data backup had been carried out by the customer.

8.2 Claims against us may not be assigned without our written permission.

### 9 Reservation of Title

9.1 We retain ownership of all products supplied until all outstanding payments and future claims resulting from an ongoing business relationship, irrespective of the legal grounds, have been settled.

9.2 Should our ownership be dissolved by processing, it is agreed that we shall acquire proportionate joint ownership of the new item in relation to value of the goods delivered by us. The same applies in the case of combining or mixing our property with other items not belonging to us. Goods to which we have the right to retain (joint) ownership will be referred to as goods subject to reservation of title in the following.

9.3 The customer is obliged to treat the goods subject to reservation of title with care. The customer is required to carry out any maintenance and inspection work regularly and at their own expense.

9.4 The customer is entitled to resell the goods subject to reservation of title in the ordinary course of business. The customer hereby assigns to us all receivables amounting to the invoice total, which accrue from resale to a third party. We accept the assignment. We authorize the customer to collect the receivables. We reserve the right to revoke the authorization and collect the receivables ourselves, if the customer is in default of payment and fails to fulfill their payment obligations in a timely and proper manner. In this case, the customer shall disclose the assignment and provide and submit the necessary information and documents.

9.5 The customer is obliged to immediately notify us about access of third parties to the goods subject to reservation of title, for instance in case of attachment, as well as any possible damage or destruction of the goods. The customer shall inform us immediately about change in ownership of the goods subject to reservation of title, as well as change of their own residence.

9.6 Any behavior contrary to the terms of the agreement, in particular default of payment, entitles us to withdraw from the contract and reclaim the goods subject to reservation of title.

### 10 Final Provisions

10.1 The law of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

10.2 Place of performance and place of jurisdiction is Munich.

10.3 Should one or more provisions of these Terms and Conditions be or become invalid, the validity of the remaining provisions shall remain unaffected. The wholly or partially invalid provision shall be replaced by a clause as close as possible to the original commercial and intended purpose.