

General Terms and Conditions of Business Bartels Mikrotechnik

1 Preamble

The following General Terms and Conditions of Business shall apply to all offers and contracts for the sale and/or delivery of goods and/or the provision of services by Bartels Mikrotechnik GmbH, including those involving consultancy, installation, and other contractual services. No deviations from these General Terms nor any ancillary oral agreements or assurances shall have any validity unless confirmed in writing by Bartels Mikrotechnik GmbH.

The counterparty's terms of business shall have no validity even if they have not been specifically rejected.

Any typographical, clerical or other error or omission in any sales literature quotation, price list, acceptance of offer, invoice or other document of information issued by Bartels Mikrotechnik shall be subject to correction without any liability on the part of the seller.

The provisions of these Standard Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business.

2 Orders and Specifications

No order submitted by the buyer shall be deemed to be accepted by Bartels Mikrotechnik unless and until confirmed in writing by Bartels Mikrotechnik or Bartels Mikrotechnik's representative. Also faxed or digital documents for orders or order confirmations without signature are valid.

Changes or supplements to the order have to be confirmed in writing.

The quantity, quality and description of and any specification for the goods shall be those set out in Bartels Mikrotechnik's quotation (if accepted by the buyer) or the buyer's order (if accepted by the seller). Any such specification, sales literature quotation etc shall be strictly confidential and must not be made available to third parties.

The buyer shall be responsible for Bartels Mikrotechnik for ensuring the accuracy of the terms of any order submitted by the buyer, and for giving Bartels Mikrotechnik any necessary information relating to the goods within a sufficient time to enable Bartels Mikrotechnik to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the goods by Bartels Mikrotechnik, in accordance with a specification submitted by the buyer, the buyer shall indemnify Bartels Mikrotechnik against all loss, damages, costs and expenses awarded against or incurred by Bartels Mikrotechnik in connection with any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from Bartels Mikrotechnik's use of the buyer's specification.

Bartels Mikrotechnik reserves the right to make any changes in the specification of the goods which are required to conform to any applicable statutory requirements or, where the goods are to be supplied to Bartels Mikrotechnik's specification, which do not materially affect their quality or performance.

If standard products are subject of the order, the buyer may not cancel or reschedule an order partly or completely without penalty if the cancellation is less than 30 days before the confirmed shipping date.

If non standard products are subject of the order, the buyer may not cancel or reschedule an order partly or completely without penalty if the cancellation is less than 120 days before the confirmed shipping date.

3 Price of the Goods

The price of the goods shall be Bartels Mikrotechnik's quoted price. The minimum order amount is 200 €.

Prices for customer specific development projects or laser jobshop orders are usually calculated individually in each case. The basis for the calculation shall be the availability of an exactly known design and of the material requirements. Should it emerge after the contract has been created that any of these requirements have been changed, or that an error has occurred in the calculation through no fault of Bartels Mikrotechnik, Bartels Mikrotechnik shall cease to be bound to the pricing that has been submitted.

Bartels Mikrotechnik reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect increase in the cost to Bartels Mikrotechnik which is due to any factor beyond the control of Bartels Mikrotechnik (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of the seller, and unless otherwise agreed in writing between the buyer and the seller, all prices are given by Bartels Mikrotechnik on an ex works basis. If the goods shall be delivered by Bartels Mikrotechnik to a different destination than at Bartels Mikrotechnik premises, the buyer shall be liable to pay Bartels Mikrotechnik charges for handling, transportation, packaging, insurance and custom fees.

The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay to the seller.

4 Terms of Payment

Buyers outside Germany have to pay the order value including the costs for handling, transportation, packaging, insurance and bank fees in advance. Domestic buyer shall pay the price of the goods within 14 days of the date of invoicing. Payment shall be effected by credit card or interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation.

International payment transactions and handling fees for credit card payments have to be paid by the customer and the amount of payment is to be increased by the bank costs.

It may be agreed between the parties that the buyer has to deliver at his own expense to Bartels Mikrotechnik a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No.500.

If the buyer fails of making any payment on the due date then, without prejudice to any other right or remedy available to the seller, Bartels Mikrotechnik shall at his discretion be entitled to; - cancel the contract or suspend any further deliveries to the purchaser; or

- charge the buyer interest on the amount unpaid, at the rate of 7 per cent per annum above European Central Bank reference rate from then being valid, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only.

5 Delivery and Final Inspection

The delivery conditions are EXW Dortmund according to Incoterms 2000. Bartels Mikrotechnik is entitled to partial deliveries.

If a fixed time for delivery is provided in the contract, and Bartels Mikrotechnik fails to deliver within such time or any extension thereof granted, the buyer shall be entitled on giving to Bartels Mikrotechnik within



a reasonable time notice in writing, to claim a reduction of 1 % per week of the price payable under the contract to a maximum amount of the order value, unless it can be reasonably concluded from the circumstances of the particular case that the buyer has suffered no loss. This limit shall not apply if the business had to be settled on a fixed date or if the delay was caused negligently or intentionally by the seller, his agents or representatives or if there is any further breach of any essential contractual obligation.

If for any reason whatever Bartels Mikrotechnik fails within such time of effect delivery, the buyer shall be entitled by notice in writing to Bartels Mikrotechnik to fix a deadline after the expiry of which the buyer shall be entitled to terminate the contract. He may also recover from Bartels Mikrotechnik any loss suffered by the buyer by reason of the failure of the seller. Damages may only be claimed for by the buyer if Bartels Mikrotechnik (or his representatives) intentionally or negligently failed to fulfill the contract. Bartels Mikrotechnik shall nevertheless be held responsible for not fulfilling any further essential contractual obligation. If the buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. Bartels Mikrotechnik shall arrange for the storage of the goods at the risk and cost of the buyer. If required by the customer Bartels Mikrotechnik shall insure the goods at the cost of the buyer.

If at the time when the order is placed it is envisaged that the counterparty is to inspect the goods or work prior to acceptance, this shall be done without delay after Bartels Mikrotechnik GmbH announces that the work is ready for inspection and acceptance. If no inspection has taken place within one month, and the counterparty has stated no adequate hindrances for the delay, the goods or work shall be deemed to have been accepted.

6 Transfer of Risks

Risk of damage to or loss of the goods shall pass to the buyer as follows:

- at the delivery of the goods to the customers location;
- in the case of goods to be delivered at Bartels Mikrotechnik's premises ("ex works", Incoterms 2000) at that time when Bartels Mikrotechnik notifies the buyer that the goods are available for collection.

7 Retention of Title

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the buyer until Bartels Mikrotechnik has received payment in full of the price of the goods and all other goods agreed to be sold by Bartels Mikrotechnik to the buyer for which payment is then due. Bartels Mikrotechnik shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the seller. Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as Bartels Mikrotechnik fiduciary agent, and shall keep the goods properly stored, protected and insured.

Until that time the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to Bartels Mikrotechnik for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties.

If the goods are processed or reshaped by the buyer and if processing is done with goods that seller has no property in, seller shall become co-owner of the goods. The same shall apply if Bartels Mikrotechnik goods are completely reshaped and mixed with other goods.

If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify Bartels Mikrotechnik in order to enable Bartels Mikrotechnik to seek a court injunction in accordance with

§ 771 of the German Code of Civil Procedure. If the buyer fails to do so in due time he will be held liable for any damages caused.

Bartels Mikrotechnik shall on demand of the buyer release any part of the collateral if the value of the collateral held in favor of Bartels Mikrotechnik exceeds the value of the claims being secured. It is to Bartels Mikrotechnik's decision to release those parts of the collateral suitable for him.

Masks and other tools produced by Bartels Mikrotechnik GmbH shall remain the property of Bartels Mikrotechnik GmbH. If the sizes of the masks permit, the parties shall be free to agree on a 2-year obligation of storage.

8 Bartels Mikrotechnik GmbH's liability in the event of the violation of third parties' protective rights.

1. The customer shall be under an obligation to request Bartels Mikrotechnik GmbH, at his expense, to conduct a patents search to ensure that no third party's industrial property rights are being violated. If the customer refuses to authorize any such patents search, and does not request one, Bartels Mikrotechnik GmbH shall bear no liability with respect to the violation of any third-party's protective rights.
2. The following shall also apply: Bartels Mikrotechnik GmbH shall bear no liability of any kind with respect to the violation of any third party's protective rights if the violation only arises through a modification to the goods by the customer. Bartels Mikrotechnik GmbH shall be under no obligation to draw the customer's special attention to the possibility of a violation of such rights as a result of the modification. Should any third party raise claims against the customer on the grounds of the violation of industrial property rights or copyright (referred to hereinafter as "protective rights"), by any products that Bartels Mikrotechnik GmbH has delivered or work that it has done, and if the use of the products is thus affected or prohibited, Bartels Mikrotechnik GmbH at its free discretion and at its own expense shall either modify or replace the products in such a way that the protective right is no longer violated, but so that the product nevertheless basically meets the agreed specification, or else shall indemnify the customer for license fees payable to the third party for the use of the products. If it is not possible for Bartels Mikrotechnik GmbH to take these actions on any appropriate terms, it shall take the product back and repay any remuneration already paid. Bartels Mikrotechnik GmbH shall be entitled to require compensation from the customer for such value as he may have derived from the product.
3. If the customer uses any product from Bartels Mikrotechnik GmbH in any area that Bartels Mikrotechnik GmbH would have been unable to foresee or in any way that leads to damage to the product or the violation of any third party's protective rights, Bartels Mikrotechnik GmbH shall bear no liability of any kind.
4. The prerequisite requirement for Bartels Mikrotechnik GmbH's liability as set out in sub-clause 8.1 shall be that the customer informs Bartels Mikrotechnik GmbH without delay and in writing of any claims raised by third parties on the grounds of a violation of protective rights, does not acknowledge any validity in the alleged violation, and does not conduct any discussions nor any out-of-court settlement except in close agreement with Bartels Mikrotechnik GmbH. Should the customer cease to use the product in order to minimize the potential loss, or for any other serious reason, he shall be under an obligation to inform the third party that no such cessation of use shall be construed as an acknowledgement of the violation of the protective rights.
5. If the customer himself is responsible for the violation of the protective rights, no claim shall be raised against Bartels Mikrotechnik GmbH under the provisions of sub-clause 8.1. The same shall apply if the violation has been caused by the customer's specification, by use having been made of the product that Bartels Mikrotechnik GmbH could not have fo-

reseen, or by the customer have altered the product or used it together with products not supplied by Bartels Mikrotechnik GmbH.

6. The customer shall raise no further claims on the grounds of a violation of a third party's protective rights. The customer's right to cancel the contract, however, shall remain unaffected so long as he is prevented from using the product on account of the countervailing rights of the third party.

9 Warranties and Exclusion Clauses

Bartels Mikrotechnik GmbH's guarantee obligations towards registered traders shall be limited to 6 months, and towards consumers to 24 months, from the date of hand-over of the product or of the results of the research and development work, to the exclusion of the United Nations Convention on contracts for the international sale of goods (CISG). The same shall also apply to guarantee claims that are not subject to the statutory guarantee periods.

The buyer shall examine the goods as required by German Law (§§ 377, 378 of the German Commercial Code) and in doing so check every delivery in any respect. Buyer shall notify Bartels Mikrotechnik of any visible defects, quantity shortage or incorrect product shipments within seven (7) days of receipt of shipment. Failure to notify Bartels Mikrotechnik in writing of any visible defects in the products within such a period shall be deemed as unrestricted acceptance. Bartels Mikrotechnik warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the buyer, will be free from design defects and suitable for the purposes intended by the buyer. Bartels Mikrotechnik shall not be liable for the Goods being fit for a particular purpose unless otherwise agreed upon, to which the buyer intends to put them. The above warranty is given by Bartels Mikrotechnik subject to the following conditions:

- Bartels Mikrotechnik shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the buyer;
- Bartels Mikrotechnik shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- The above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to the seller.
- Bartels Mikrotechnik GmbH guarantees that in all its work it applies scientific care and adheres to the accepted rules and the latest state of technology, but not that it will achieve any research or development goal.
- This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to Bartels Mikrotechnik within six months from the date of delivery.

The buyer is entitled to demand the delivery of any substitute goods, or repair or a reduction of the purchase price as set forth with the terms of each individual contract of sale. Where any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to Bartels Mikrotechnik in accordance with these conditions, Bartels Mikrotechnik shall be entitled at Bartels Mikrotechnik's sole discretion to either replace the goods free of charge or repair the goods. If Bartels Mikrotechnik is neither ready nor able to either repair or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

The undertaking to replace or repair products which are defective in material or workmanship shall be the full extent of Bartels Mikrotechnik's liability in respect of the sale and constitutes the sole remedy of the buyer for any breach of the above mentioned warranties.

Bartels Mikrotechnik shall not be liable to the buyer under or in connection with the order for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of damage to or corruption of data or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on the part of Bartels Mikrotechnik. The same applies if Bartels Mikrotechnik may be held responsible for the breach of any further essential contractual obligation. Nothing in these terms shall also exclude or in any way limit the liability of Bartels Mikrotechnik for fraud, death or personal injury caused by its negligence or any liability to the extent the same may not be excluded or limited as a matter of law.

Insofar as the liability of Bartels Mikrotechnik excluded or restricted this is also valid for employees, agents, reps and assignees of Bartels Mikrotechnik.

10 Special agreements on research and development work.

1. Execution and completion of research and development work

- a) The customer and Bartels Mikrotechnik GmbH, after discussion and agreement, shall provide each other punctually with the information necessary for the execution of the research and development work and with any necessary documentation, objects, and aids in a state suitable for the intended purpose, or else shall make them available for the duration of the work.
- b) The objects and documentation that the customer supplies to Bartels Mikrotechnik GmbH shall be supplied on loan and returned to the customer when the contract has been fulfilled unless anything to the contrary has been agreed.
- c) The results of the research and development work shall be made available to the customer at Bartels Mikrotechnik GmbH's operational location unless anything to the contrary has been agreed.

2. Publications, advertising

- a) The customer shall be entitled to publish the results of the project. He shall inform Bartels Mikrotechnik GmbH about his publications, if possible before they appear.
- b) Bartels Mikrotechnik GmbH shall be entitled to publish basic scientific and technical statements that do not affect the customer's interests.
- c) The customer shall use the results for advertising purposes but shall not expressly mention Bartels Mikrotechnik GmbH without its permission.
- d) Once a project has been successfully completed the customer shall be included in Bartels Mikrotechnik GmbH's list of references.

3. Rights to research and development results

- a) The research and development results shall be made available to the customer when the project has been completed in accordance with the description of task.
- b) Unless anything to the contrary has been agreed the intellectual ownership of the research and development work and in particular the right to use it out-

side the specific project context, and all other industrial property rights and copyright that may be relevant, shall remain vested in Bartels Mikrotechnik GmbH.

c) The customer can be granted a simple, non-exclusive right to use the inventions arising from the execution of the project with Bartels Mikrotechnik GmbH's written consent. In this case the customer shall reimburse Bartels Mikrotechnik GmbH not only with the agree license royalty but also for an appropriate share of the costs of applying for, maintaining, and defending the protective rights and any remuneration statutorily owed to employees for their inventions.

d) Neither partner shall derive any exclusive rights to any of the matters on which they collaborate. Bartels Mikrotechnik GmbH shall be free to work on other projects with the same subject provided it adheres to the relevant confidentiality agreements.

11 Confidentiality

Bartels Mikrotechnik GmbH and the customer shall make no information available to third parties that each receives from the other, whether of a technical or a business nature, and that has to be regarded as needing to be kept secret. This shall not apply to information that is available to the general public or if either Bartels Mikrotechnik GmbH or the customer has given a written waiver of the need to treat it as confidential. If a special confidentiality agreement should be necessary in individual cases the parties shall be free to enter into it. Die Bartels Mikrotechnik GmbH keeps a draft available of a mutual confidentiality agreement.

12 Miscellaneous Clauses

Bartels Mikrotechnik reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product. Bartels Mikrotechnik's products are not authorized for use in critical components in life support devices or systems without written approval from Bartels Mikrotechnik.

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior the date hereof, and which shall become null and void from the date of the agreement is signed.

This agreement shall not be assigned or transferred by either party except with the written consent of the other each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

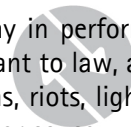
Any notices hereunder have to be send to

Bartels Mikrotechnik GmbH, Emil-Figge-Strasse 76a, 44227 Dortmund, Germany



13 Force Majeure

Bartels Mikrotechnik shall not be liable to the buyer for any failure to perform or delay in performance required under this terms due to acts of law, including governmental bodies acting pursuant to law, acts of strikes, lockouts or other labor disturbances, acts of the public enemy, wars, insurrections, riots, lightning, fires, floods, civil disturbances, explosions, breakage or accidents to machinery, or any other cause, whether of the kind enumerated above or otherwise, not reasonably within the control of the party claiming inability to perform.



14 Choice of Law; Place of Jurisdiction

This agreement shall be governed by and construed in accordance with German law excepting the rules of





the German International Private Law (EGBGB). The UN Convention for the International Sale of Goods (CISG) is not applicable. Each party agrees to submit to the jurisdiction of the courts having jurisdiction for the seller. Bartels Mikrotechnik shall have the right to bring a claim before a court at the buyer's principal place of business or at his discretion before any other court being competent according to any national or international law.

Dortmund, Germany, September 2010

Bartels Mikrotechnik GmbH

