

General Terms and Conditions Technology

I. Scope

All deliveries and services of RoodMicrotec GmbH and its affiliated companies (hereinafter referred to as RoodMicrotec) for the performance of research and development work, the creation of test software and hardware, component testing, safety storage, supply chain management as well as consulting and analyses shall be subject exclusively to these General Terms and Conditions (hereinafter referred to as GTC TECHNOLOGY) for entrepreneurs (§ 14 BGB). By placing an order with RoodMicrotec, the GTC are deemed to be accepted unless the customer expressly objects to their validity when placing the order. Amendments to the GTC TECHNOLOGY shall also become part of current contracts from the effective date if the customer does not object within one month of notification of the amendment despite being specifically informed of his right to object. Customers' GTC will have no legal effect.

II General provisions for order execution

1. Scope and execution of research and development services, MOV

The services owed by RoodMicrotec shall result from the offer, modified if necessary by the order confirmation. RoodMicrotec may specify lump sum minimum order values (MOV) which exclusively cover essential contractual services. All agreements, including supplements, amendments, and ancillary agreements, shall be made exclusively in writing. If the order placement deviates from the underlying offer, the deviations are deemed to be agreed only after explicit written confirmation by RoodMicrotec. The offer and all documents submitted by RoodMicrotec in this connection may neither be reproduced nor made accessible to third parties and shall remain the property of RoodMicrotec. They shall only be used within the framework of the contract and shall be destroyed on request if the quotation does not result in an order being placed. Dates and deadlines for deliveries and services shall only be binding if confirmed in writing by RoodMicrotec. Transfers of rights and obligations of the customer under the contract shall require the consent of RoodMicrotec. Agreements on dates and deadlines shall be subject to the proviso that the suppliers, subcontractors, or cooperation partners of RoodMicrotec fulfill the obligations for which they are incumbent. Events of force majeure, general supply difficulties, shortages of energy and raw materials, transport bottlenecks through no fault of RoodMicrotec, strikes, official decrees, or other disruptions at RoodMicrotec or its suppliers, subcontractors, or cooperation partners which, from an objective point of view, are not culpably caused by RoodMicrotec as well as any thus arising consequences shall release RoodMicrotec from its obligation to perform for the duration of the disruption and to the extent of its effects. Such events shall give RoodMicrotec the right, under the exclusion of any liability for compensation, not to provide contractual services or to withdraw from the contract in whole or in part because of the yet unfulfilled part of the contract. In such cases, RoodMicrotec shall inform the customer immediately of the failure to perform and refund any consideration already paid. RoodMicrotec shall also have the right to render partial performance to a reasonable extent.

2. Equipment, materials, and rights to be provided by the customer

The customer shall be obliged to provide RoodMicrotec with all documents and information, components, materials, and equipment - in the sense of "working materials" - required for the execution of the order in due time. This shall also apply for all services and works, particularly in supply chain management. This work equipment may be treated as correct and complete unless its inspection has been expressly agreed upon as part of the order. If the customer or third parties engaged by the customer provide assistance in the implementation of the order, the relevant German laws, ordinances, accident prevention regulations, VDE regulations, DIN standards, and similar regulations shall be observed. The customer shall ensure that the use of the work equipment does not infringe the industrial property rights of third parties and shall indemnify RoodMicrotec against all claims. License fees, compensation, or costs incurred to avoid infringements of industrial property rights shall be borne by the customer. The customer shall bear the costs and risk of delivery of the work equipment to be supplied by him, unless collection by RoodMicrotec has been agreed upon. In the event of shipment by the customer, the work equipment shall be properly packed in accordance with any instructions given by RoodMicrotec. The customer shall be responsible for the transport insurance. He shall be liable for any damage resulting from the nature of the work equipment and shall notify RoodMicrotec in writing of all hazard and handling instructions known to him.

3. Execution of the contract

RoodMicrotec shall execute accepted orders in accordance with the established rules of technology as well as the German statutory and official regulations in force at the time of execution. No guarantee is given for the technical rules and the correctness of the safety programs or regulations on which the tests are based. RoodMicrotec shall inform the customer without delay should it become apparent during the processing of the order that there is a need for an expansion or change in the technical or personnel requirements to attain the contractual performance. The parties shall then decide by mutual agreement whether, to what extent, and at what cost the order is to be proceeded. If no agreement is reached, both parties shall be entitled to withdraw from the contract by written declaration. In this case, RoodMicrotec shall be entitled to reimbursement of all expenses incurred by this date and payment of remuneration corresponding to the actual cost of performance.

4. Subcontractors

RoodMicrotec shall have the right to have its services performed by carefully selected and certified subcontractors. Notwithstanding any agreements made otherwise, RoodMicrotec shall have the copyright to any expert reports and test results of any kind prepared by them.

5. Work result, acceptance, partial services, duty to inspect, delivery, customs

Unless otherwise agreed, RoodMicrotec shall consign to the customer all findings obtained in the course of carrying out the order as a final report in written or electronic form in the case of research and development work, consultations, analyses, or tests. In the case of construction and finishing of components and assemblies, RoodMicrotec shall hand over the work result in physical form.

If acceptance of the work result is agreed upon, an acceptance report shall be drawn up and signed by both contracting parties. Otherwise, delivery of the work result by RoodMicrotec evidenced by a delivery note shall suffice. Risk shall pass to the customer upon acceptance or delivery, even if the work result remains with RoodMicrotec for further processing.

When a test environment is created, the test program and the required hardware are released. When test software is produced for installation at the customer's premises, only the compiled version of the test program shall be handed over as the work result. Only RoodMicrotec shall make changes to the test program. An insight into the source code may be granted for the purpose of debugging. The source code shall only be released based on a separate agreement.

Self-contained partial services of RoodMicrotec which may be used by the customer shall be accepted at RoodMicrotec's request; the limitation period shall then commence with the delivery of the respective partial service or the partial acceptance.

Claims for defects by the customer due to defects, underdeliveries, or misdeliveries shall be subject to the customer having fulfilled his statutory duties of inspection and notification of defects (§§ 377, 381 HGB) without delay. Claims due to recognizable defects shall require to be notified to RoodMicrotec in writing within a period of 14 days from delivery. Hidden defects have to be reported immediately after discovery - but at the latest within the statutory warranty period.

Unless expressly agreed otherwise, the work results shall be delivered "ex works" (EXW Incoterms 2020) from the respective RoodMicrotec company. The customer shall ensure that unauthorized third parties do not have access to the delivered work results. If the customer delays shipment of the work results, the risk shall pass to the customer on the day the work results are ready for dispatch. The customer shall arrange for any export licenses, embargoes, and customs declarations. RoodMicrotec may provide services for a fee, but shall not be liable for the customs and arms control properties of the goods. The customer shall always be the "exporter" within the meaning of the dual-use regulations.

Unless otherwise agreed, work equipment shall be stored at RoodMicrotec without insurance for a maximum of 12 months after completion of the order. After expiry of this period, work equipment shall be destroyed at the customer's expense if the applicable law requires special disposal. Work equipment shall only be returned uninsured on request and at the customer's expense. In supply chain contracts, the provisions of the Master Service Agreement shall apply to storage, insurance, and the bearing of costs.

6. Warranty and guarantee

Warranty claims by the customer shall be limited to a claim for rectification or replacement delivery, unless they are based on intent or gross negligence on the part of RoodMicrotec, its legal representatives, employees, or vicarious agents. RoodMicrotec shall have the right to choose. RoodMicrotec shall be entitled to make a reasonable number of attempts of rectification or replacement deliveries, but at least two, and to make the subsequent performance owed dependent on the customer paying the purchase price due. However, the customer shall be entitled to retain a reasonable portion of the purchase price in proportion to the defect. The right to refuse subsequent performance under the statutory conditions remains unaffected. RoodMicrotec shall be given the time and opportunity required for subsequent performance, in particular to hand over the defective goods for inspection purposes. Subsequent performance shall include neither removal of the defective item nor reinstallation if RoodMicrotec was not originally obliged to install it. Should a defect actually exist, RoodMicrotec shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor, and material costs excluding removal and installation costs. If the customer's request to remedy the defect proves to be unjustified, he shall reimburse all costs incurred. If these rectifications or replacement deliveries fail or do not lead to success within a reasonable time, the customer may choose between rescission of the contract or reduction of the remuneration.

Warranty claims shall expire one year after delivery or acceptance, including in the case of expert opinions or test software as well as for consequential damage. The right to substitute performance of the rectification of defects with reimbursement of costs is excluded. All warranty claims shall lapse if the customer or a third party modifies, improperly uses, or repairs work results without the consent of RoodMicrotec or does not install, operate, or maintain them in accordance with the application rules. A declaration of guarantee by RoodMicrotec shall only exist if the content of the guarantee as well as the duration and territorial scope of the guarantee protection are sufficiently defined in writing. Further claims, in particular claims for damages, shall be limited in accordance with the following provisions.

7. Liability

The liability of RoodMicrotec, its legal representatives, executive employees, and vicarious agents as well as the liability of RoodMicrotec for these persons for damages shall be excluded, except in the case of intentional or grossly negligent acts. This liability towards registered traders shall also be excluded unless a primary obligation in the contractual relationship has been breached. This also applies to claims arising from §§ 823 ff. BGB, insofar as these compete with contractual claims.

In the event of a breach of essential contractual obligations (cardinal obligation or essential secondary obligation) or in the event of default, RoodMicrotec shall be liable for simple negligence, however, limited to the foreseeable direct damage typical of the contract, excluding loss of profit and consequential/recourse damage. Liability is generally limited to 5% of the order amount; the maximum liability limit is €500,000.00 per claim. At the customer's request and expense, however, a higher liability may be agreed upon, provided that RoodMicrotec can obtain appropriate reinsurance cover from its liability insurer. Statutory liability limits shall apply to customers who are not merchants, entrepreneurs, legal entities under public law, or special funds under public law. The same shall apply to damages arising from injury to life, body, or health if RoodMicrotec is responsible for the violation of duty, and to damages arising from fraudulent concealment of a defect or the defect of a guaranteed quality. A violation of duty by RoodMicrotec shall be deemed equivalent to a violation of duty by its legal representatives, executives, or vicarious agents.

8. Product liability

Liability under the Product Liability Act remains unaffected. However, in relation to third parties, in particular the end consumer, only the customer is the manufacturer within the meaning of statutory product liability. Insofar as liability on the part of RoodMicrotec for the work result may be possible under statutory provisions, the customer shall indemnify RoodMicrotec in all respects against all corresponding obligations.

III. Terms of payment

1. Partial payments at partial acceptance, minimum order value (MOV) lump sum

RoodMicrotec shall be entitled to issue interim invoices in accordance with the costs incurred in the case of order values in excess of €2,000.00 or in the case of orders, which are expected to be processed over a period of more than three months. In the case of small partial deliveries, a lump sum of €300.00 plus any freight and ancillary costs shall be charged for contractual services.

2. Due date and default

Invoices shall be due and payable immediately upon receipt without deduction. In the event of late payment, RoodMicrotec shall charge interest on arrears at a rate of 5% above the base interest rate per annum determined by the Deutsche Bundesbank, or, if applicable, a demonstrably higher default damage. If the customer is a merchant, the interest on arrears shall be 8 percentage points above the respective base rate. In the event of late payment, an amount of €5.00 shall also be due for each extrajudicial reminder. The customer shall have the right to prove that RoodMicrotec has not incurred any further damage or has incurred significantly less damage or that the dunning costs are lower.

3. Invoice complaints

RoodMicrotec must be notified in writing of any invoice complaints within two weeks after receipt of the invoice. Otherwise, the invoice shall be deemed to be accepted. The customer will be expressly informed of this on the invoice (preclusion period).

4. Deterioration of assets and insolvency

If RoodMicrotec obtains knowledge of indications of impairment of the creditworthiness or insolvency of the customer, it may render its services dependent on advance payment of the remuneration, even if RoodMicrotec only obtains this knowledge between conclusion of the contract and performance or after partial performance. If the customer refuses advance payment or fails to make payment even after RoodMicrotec has set a deadline, RoodMicrotec shall be entitled to withdraw from the contract and claim damages. If an application for insolvency affecting the customer is filed or insolvency proceedings are opened, RoodMicrotec shall immediately be entitled to withdraw from the contract and claim damages, whereby all payment claims of RoodMicrotec shall become due and payable immediately upon receipt of the declaration of withdrawal by the customer.

5. Retention of title

RoodMicrotec shall retain proprietary of delivered products until all claims, including future (balance) claims, have been paid in full (goods subject to retention of title). Rights of use may neither be pledged nor assigned as security. Any treatment or processing of the reserved goods shall be carried out for RoodMicrotec. If the customer incorporates the goods into other goods, RoodMicrotec shall become co-owner of the newly created products in the ratio of the value of the goods subject to retention of title to the other goods contained in the product; the parties shall also regard these products as goods subject to retention of title. The customer may resell these - only subject to retention of title - but other dispositions, in particular pledges or security transfers, shall not be permitted. If the customer suspends payments, if insolvency proceedings are applied for or opened against the customer's assets, or if a provisional insolvency administrator is appointed, the above mentioned rights of the customer shall lapse. After termination of the contract, RoodMicrotec may demand surrender of the goods subject to retention of title or assignment of the customer's surrender claims. The customer shall be obliged to cooperate in the realization of the claim. RoodMicrotec shall release the securities if their value exceeds all claims to be secured by more than 10%. If the national law at the customer's registered office does not permit retention of title, RoodMicrotec shall be entitled to reserve and exercise equivalent rights. The customer shall then cooperate in the necessary measures. In any case, RoodMicrotec shall insist on a simple retention of title.

6. Prohibition of set-off and rights of retention

The customer may only offset counterclaims, which are undisputed, have been legally established, or have been recognized in writing by RoodMicrotec. In the case of customers who are entrepreneurs, merchants, legal entities under public law, or special funds under public law, rights of retention shall only exist if the claims are based on the same legal relationship as the obligations.

IV. Industrial property rights

1. Copyright protection

RoodMicrotec shall retain the copyright to all work results. The customer may use the work results produced within the scope of the order only after full payment of the remuneration and for the agreed purpose for which it is intended. Publication and reproduction of RoodMicrotec's work results, including the use of extracts, shall require prior written consent. This also applies to promotional use of the name "RoodMicrotec" for references and the like.

2. Secrecy

The contracting parties assure reciprocally that the information received from each other as well as know-how and other knowledge arising during the execution of the contract will be treated confidentially. Exclusively the contracting parties shall use such knowledge for their own purposes within the scope of the contractual relationship. With regard to possible inventions and applications for industrial property rights, both parties agree to maintain confidentiality until they are published. This obligation shall also apply beyond the termination of this contract.

3. Existing property rights

The contractual relationship shall not affect the industrial property rights already existing at the time of conclusion of the contract. If know-how of RoodMicrotec is used during order fulfillment which the customer requires to utilize the work result, the customer shall receive a non-exclusive, non-transferable and free legal right of use. If industrial property rights or copyrights of RoodMicrotec are used in the execution of the order which the customer requires to utilize the work result, the customer shall receive a non-exclusive and non-transferable legal right of use in return for appropriate remuneration. Details and prices shall be agreed upon separately. RoodMicrotec shall always receive a free, non-exclusive, non-transferable right of use to IP rights and copyrights, which arise in the course of the work carried out as part of the order.

4. New property rights arising during the execution of the order and their exploitation

The parties commit themselves to claim employee inventions relating to the work result that are made during the execution of the order without restriction and to apply for industrial property rights in their own name without delay. If employees of several contracting parties are involved in inventions (joint inventions), these inventions and their property rights shall be owned jointly by the contracting parties, otherwise solely by the contracting party whose employees are the inventors (individual inventions). In the internal relationship between the contracting parties, the entitlement to the inventions shall be divided in proportion to the genuine inventor shares of their employees. The costs for property rights applied for on behalf of their own name shall be borne by the two parties themselves respectively.

Both parties shall not impugn existing property rights or new property rights arising during the execution of the order and shall defend property rights to which they alone are entitled against challenges through third parties at their own expense. In the case of joint inventions, the parties shall bear the costs proportionately, in case of doubt in equal shares.

5. Publications

RoodMicrotec and its employees shall be entitled to publish scientific publications about the results of the work achieved in the course of carrying out the order, insofar as they fundamentally relate to scientific findings. It is taken into account that dissertations, theses or applications for industrial property rights are not affected.

V. Final provisions

1. Data processing

RoodMicrotec shall be entitled to store and process all data of the customer in compliance with the German DSGVO data protection regulations, regardless of whether it originates from the customer itself or from third parties.

2. Place of jurisdiction

Unless the parties expressly agree otherwise, the place of performance for both parties shall be the registered office of the respective RoodMicrotec company. If the customer is a merchant, a legal entity under public law, or a special fund under public law, the place of jurisdiction for both parties shall be Augsburg, Germany. However, RoodMicrotec shall have the right to take legal action at the customer's registered office. Augsburg shall also be the place of jurisdiction - even if the customer is not a merchant - if the customer has no general place of jurisdiction in Germany, moves his domicile or usual place of residence outside the Federal Republic of Germany after conclusion of the contract, or his domicile or usual place of residence is not known at the time the action is brought.

3. Choice of law

The legal relationship between RoodMicrotec and the customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws provisions of German law, even if orders are placed from abroad or deliveries are made abroad.

4. Conditions for non-merchants

If customers are not entrepreneurs (§ 14 BGB [German Civil Code]), an order can also be accepted by RoodMicrotec without written confirmation, agreed order deadlines and delivery dates shall always be binding, and warranty periods as well as maximum liability limits shall be determined exclusively in accordance with the law.

5. Severability clause

Should individual provisions of the contract be entirely or partially invalid, the rest of the contract shall nevertheless remain valid. The same applies in the event of an omission.