Microporous GmbH
Gewerbestrasse 8,
9181 Feistritz im Rosental
Austria

1. **General - Applicability**

1.1 The following Conditions of Sale (hereinafter referred to as our Delivery Conditions) shall apply to all contracts and sales concluded between the customer and us. Provisions that conflict with these conditions or customer provisions deviating here from shall not be valid nor have any effect with respect to products sold by us to the customer, unless we have expressly agreed to their effectiveness in writing. The customer's provisions also shall not apply in the event that our Delivery Conditions do not provide for a particular situation; in this case, industry standards as reasonably determined by us shall apply. Our Delivery Conditions shall also apply when we, knowing of conflicting customer provisions or of customer provisions deviating from our conditions, make delivery without reservation to the customer. For the avoidance of doubt, to the extent of a conflict between these Delivery Conditions and a written contract in effect between us and a customer, such written contract shall prevail.

1.2 Our Delivery Conditions shall also apply to all future business transactions with the customer within the context of its routine business activities.

1.3 Our Delivery Conditions shall apply only to entrepreneurs within the meaning of § 1 Austrian Consumer Protection Act.

1.4 Incoterms 2020 shall be used to define the party responsible for transportation costs, insurance costs, customs fees, taxes charged and any other governmental levy imposed by law on account of the sale of the products.

2. Offer – Offer Documents

2.1 Our offer is provisional insofar as the order confirmation does not contain anything to the contrary or we have not otherwise explicitly agreed in writing. A contract shall first arise when we confirm an order in writing or perform on the basis of the order.

2.2 We retain all copyrights and proprietary rights to diagrams, catalogues, calculations, and other documents; they shall not be provided to third parties or used by customer for any purpose other than in connection with the use of our purchased products in the ordinary course of customer's business without our express written approval.

3. Prices – Payment Conditions

3.1 Our prices apply (FCA), without packaging and transportation costs, insofar as the order confirmation does not provide otherwise.

3.2 Our prices do not include statutory VAT. Discounts are allowed only when previously expressly agreed upon in writing.

3.3 To the extent not otherwise agreed upon in writing, all invoices for performance of our contractual obligations shall be paid within 10 days of invoice receipt in Euro or in any other agreed upon currency. If the customer's payment is delayed, we are entitled to charge the statutory interest (8 points above the basic interest rate, § 1333 sec. 2 Austrian General Civil Code) on late payments.

3.4 If we have agreed with the customer on a payment by instalments the entire amount of the purchase price shall be immediately due if the customer fails to pay the first instalment at the provided deadline.

3.5 The customer is entitled to a set-off or assertion of a right of retention or right to refuse acceptance of performance only when its counterclaims are finally established, undisputed or accepted by us. The exercise of a right of retention also requires that the customer's counterclaim be based upon the same contractual relationship.

3.6 If we are obligated to provide advance performance and, after completion of the contract, circumstances become known to us from which our payment claim is endangered by the customer's inability to pay, we may demand either a security within a reasonable timeframe or payment contemporaneous with delivery of the products. If the customer does not comply with this demand, we are entitled to withdraw from the contract without affecting any of our other legal rights.

3.7 If, during the term of this Agreement, changes occur in one or more factors impacting our price calculation, such as costs of materials and/or energy, governmental actions, cost of freight for raw materials, insurance premiums, exchange rates, taxes, etc., we shall be entitled to increase prices accordingly. We will inform the customer in writing of any price increase. The customer will be deemed to accept a price increase unless it informs us within 7 days after receipt of such notice that it does not accept the price increase. In such event, we shall have the option to continue to supply the products at the previous price or terminate the Agreement. If we decide to terminate the Agreement, it will be considered terminated as to the affected quantities and neither party shall be entitled to recover direct, indirect or consequential damages as a result thereof.

4. Delivery Time

4.1 Delivery shall be completed when products are tendered to a common carrier or licensed trucker at the Microporous FCA shipping point.

4.2 Delivery dates or deadlines are non-binding information, to the extent not otherwise expressly agreed upon in writing. The delivery time provided by us begins after all technical issues have been clarified with the customer and any required advance payments are made.

4.3 There is no delay in the statutory sense when delivery retarding are caused by unforeseeable events for which we are not responsible (for example, malfunctions, strikes, lockouts, shortage of transport means, difficulties in obtaining raw materials, governmental orders, or delivery delays by our suppliers) or by force majeure. The agreed upon delivery deadline shall be extended by the length of the impediment. If the impediment lasts longer than one month, both contracting parties are entitled, after the unsuccessful setting of a reasonable amount of time, to withdraw as to the non-fulfilled portions of the contract.

4.4 We shall indemnify the customer for delivery delay only when the delivery delay is caused by an intentional or grossly negligent breach of the agreement by us. This limitation of liability does not apply to the extent a commercial Fixgeschäft (agreement with a specific deadline for performance) within the meaning of § 919 Austrian General Civil Code or § 376 Austrian Commercial Code was agreed upon.

4.5 For cases in number 4.4, our liability is limited to reasonable, foreseeable and typically arising damages, except when the delivery delay was caused by an intentional breach of the contract.

4.6 In the event that mandatory liability for slight negligence is provided by law, we will be liable for slight negligence, with the proviso that in such a case the liability for damage compensation is limited to reasonable, foreseeable and typically arising damages.

4.7 In the event the customer defaults on acceptance or breaches another of its duties to cooperate, we are entitled to demand the damages we have incurred, including any additional expenses. In such a case, the risk of loss or deterioration of the products also transfers to the customer, at the point in time it defaulted on acceptance.

4.8 We are entitled to make partial deliveries at our discretion.

4.9 If delivery is delayed by customer, transfer of costs and risk of loss shall become effective when the products are ready for dispatch.

5. **Transfer of Risk**

5.1 Unless otherwise agreed, the delivery clause (FCA, Incoterm 2020) our production plant in Feistritz shall apply to entrepreneurs and public corporations.

5.2 Upon the express request of the customer, we will acquire transport insurance for the delivery, the costs for which shall be borne by the customer.

6. Warranty (against Defects)

6.1 The customer's warranty rights (claims for defects) require that the products be inspected promptly upon receipt and that a written notice regarding visible defects be made immediately after the inspection and promptly after discovery in the case of hidden defects, § 377 Austrian Commercial Code.

6.2 Customer shall provide us with samples of any materials customer claims are defective for our evaluation and confirmation.

6.3 Claims for defects shall not be valid for insignificant deviations in specifications or quality or only an insignificant reduction in usability.

6.4 All of those parts or services that exhibit a material defect within the limitation period may be –at our discretion– improved, replaced by a new delivery, or re-manufactured by us, to the extent their causes existed at the time of the transfer of risk. The foregoing shall be customer's sole remedy for defective product except to the extent required by law. At our request the customer shall return all affected products to our production plant in Feistritz at our cost if we have acknowledged the defects.

6.5 If the customer claims defects based upon reasons for which we are not responsible or upon wrongly claiming a defect, we are entitled to charge the customer for the reasonable costs we incurred in remedying the defect or establishing it.

6.6 Claims by the customer for expenses necessarily incurred for the purpose of re-fulfilment of performance, particularly transportation, mileage, labor, and material costs, are excluded, unless it involves transport required under the contract. We are entitled to charge the customer for such additional costs.

6.7 Before the customer can assert further claims or rights (withdrawal, reduction, damage compensation, compensation for expenses), we shall be given a reasonable deadline of no less than 60 days within which to perform, to the extent we have not provided a written guaranty stating otherwise. If, after at least two performance attempts, the performance fails, is impossible, or is unreasonable for the customer, or if we refuse performance, the customer may withdraw from the contract or reduce the reimbursement. As to the assertion of claims for damage compensation by the customer, number 7 of these conditions applies.

6.8 Claims under a right of recourse by the customer against us, based, for example, on the purchase of consumer goods § 933b Austrian General Civil Code, are excluded to the extent these are based on the customer's agreements with its buyers, which go beyond the buyer's statutory claims for defects.

6.9 All warranty claims by the customer become barred 12 months after transfer of the risk, except when the customer asserts a claim under a right of recourse §933b Austrian General Civil Code or when we have maliciously concealed the defect. If, due to a defect, there is a need for performance to be repeated, the time bar is only stayed until performance has been repeated and does not restart from the beginning.

6.10 As to claims for damage compensation based upon defects, number 7 of these conditions applies. The assertion of further claims and rights against us, our legal representatives, or agents for whom we are vicariously liable because of a material defect, is excluded.

6.11 Defects which are due to abuse, misapplication, failure to follow the instructions for use, warnings, safety or other regulations provided by us, improper or prolonged storage or other mistakes on the part of the customer, are excluded from the warranty. In case of products which have been produced at the order of or according to the customer's instructions or specifications, the warranty will only cover the proper production of the products. Normal wear will not be covered under warranty.

6.12 Our warranty obligations cease if any changes or repairs are caused by customer or a third person without our prior written consent. The performance of a warranty obligation does not prolong the original warranty period.

7. Claims for Damage Compensation and Liability Based on other Grounds

7.1 Except for strict liability which may be imposed under the Products Liability Act, we are liable only for damages based on an intentional or grossly negligent breach of duty or malice by us, our legal representatives or agents for whom we are vicariously liable. Further contractual or statutory liability is excluded without regard to the legal status of the claim asserted. Insofar as we are liable for a grossly negligent breach of duty or for malice pursuant to sentence 1, compensation for damages is limited to reasonable, foreseeable and typically arising damages.

7.2 Further, we are also liable for damages that are caused by simple negligence to the extent the negligence concerned the breach of contractual obligations, the fulfilment of which was of particular importance to achieving the purpose of the contract (cardinal obligation; Kardinalpflicht). In this case, liability is limited to reasonable, foreseeable and typically arising damages.

7.3 We shall not be liable in regards to the quality or durability of the products unless we have provided a guaranty as to quality or durability to the customer in writing, signed by us.

7.4 There is no modification of the burden of proof connected to the above rules pursuant to numbers 7.1 – 7.3.

7.5 The customer is obligated to use the products delivered by us exclusively for the intended purpose and in observance of all technical guidelines and specifications. We are not liable for damages, including consequential damages of any type, based upon non-observance of this obligation.

7.6 Where our liability is excluded or limited, it also applies to the personal liability of our employees, representatives and agents for whom we are vicariously liable and our responsibility for their behavior.

7.7 Claims between the customer and us are time-barred in accordance with number 6.8 of these conditions to the extent the claims do not concern tortuous product liability the Product Liability Act.

8. Applicable Law – Venue – Place of Performance

8.1 The legal relationship between the parties is exclusively governed by Austrian law with the exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

8.2 To the extent the customer is an entrepreneur venue shall lie with the tribunal competent for commercial matters for the 1st Vienna local district. We are entitled, however, to sue the customer in the court where it is domiciled.

8.3 To the extent the customer is an entrepreneur and the order confirmation does not otherwise provide the place of performance is Feistritz.

8.4 The parties agree that all disputes arising out of or in connection with the purchase contract or these Delivery Conditions s may be finally settled under the Rules of Arbitration of the International Chamber of Commerce in Vienna (Wiener Regein) by one or more arbitrators appointed in accordance with said Rules.

9. Miscellaneous Provisions

9.1 All agreements made between us and the customer for the purpose of performing this purchase contract to which our Delivery Conditions are attached are set forth in the purchase contract or herein. Modifications and additions to the purchase contract shall be in written form.

9.2 The ICC Force Majeure Clause 2020 (long form) and ICC Hardship Clause 2020 (long form) are each incorporated herein by reference and shall apply to all sales hereunder.

9.3 If an individual provision of the purchase contract or our Delivery Conditions is ineffective, the effectiveness of the other provisions shall remain unaffected.

9.4 Our Delivery Conditions are drafted in English. Each party acknowledges and agrees that it understands the English language.

9.5 Any changes to our bank account details will be communicated exclusively in writing on official company letterhead, duly signed by an authorized representative. No changes communicated by email alone or through any other informal means shall be considered valid. The customer is responsible for verifying such communication before making any payment. We disclaim any liability for payments made to incorrect or fraudulent accounts resulting from failure to observe this procedure.

10. Export Restrictions and Compliance Obligations

10.1 The Products, including any software, documentation, and any related technical data included with, or contained in, such Products, and any products utilizing such Products, software, documentation, or technical date (collectively, "Regulated Products") may be subject to export control laws and regulations, including laws, regulations, and rules of the EU and the USA. The Customer shall not, and shall not permit third parties to, directly or indirectly, export, reexport, or release any Regulated Product to any jurisdiction or country to which, or any party to whom, or for any use for which, the export, re-export, or release of any Regulated Product is prohibited by law, regulation or rule. This specifically includes, but is not limited to Russia and Russian occupied territories in Ukraine (including, but not limited to the so-called Donetsk People's Republic and Luhansk People's Republic, as well as any other country or party subject to EU and/or US sanctions at the time of export, re-export, transfer, or release.

10.2 The Customer shall undertake its best efforts to ensure that the purpose of paragraph (10.1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

10.3 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (10.1).

10.4 Any violation of paragraphs (10.1), (10.2) or (10.3) shall constitute a material breach of an essential element of this Agreement, and Microporous shall be entitled to seek appropriate remedies, including, but not limited to immediate termination of this Agreement.

10.5 The Customer further agrees to indemnify and hold harmless and defend Microporous, Microporous' shareholders, members, officers and employees from and against all claims and suits by public competent authorities and/or third parties for damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of or resulting from a breach of this Section 10 by Customer and its successors and permitted assigns.

10.6 The Customer shall immediately inform Microporous about any problems in applying paragraphs (10.1), (10.2) or (10.3), including any relevant activities by third parties that could frustrate the purpose of paragraph (10.1). Customer shall make available to Microporous information concerning compliance with the obligations under this Section10 within two weeks of a request for such information.