



## **GENERAL TERMS AND CONDITIONS OF SALE**

### **Article 1: PURPOSE**

These general terms and conditions of sale refer to the order form accepted and signed by the Client.

These general terms and conditions of sale aim to specify the terms and conditions under which the company VMICRO (the Vendor), SAS (limited liability company) with a capital of 37,600.00 euros, listed with the Lille Metropolis Trade and Companies Register under number 809 989 833, and whose head office is located at 27 Rue Charles Saint Venant, 59260 HELLEMES, France, sells to the Client probes for scanning probe microscopes and/or in general, any interface system for scanning probe microscopes.

Order validation by the Client or any start made on implementing the order by the Vendor implies full and effective application of these General Terms and Conditions of Sale. At any moment, the Vendor reserves the right to change these general terms and conditions, it being specified that the applicable terms and conditions shall be those in force at the order date.

These terms and conditions apply to any international sales outside the European Union.

### **Article 2: ORDERING AND DELIVERY PROCEDURE**

Any order placed by the Client is final.

The Client shall place its order by way of an order form or online. In the event of an order placed online, final acceptance of the Client's online order shall be deemed to be equivalent to signing an order form and full and entire acceptance of said order.

The Client's signature of the quotation or order form shall be equivalent to full and entire acceptance of the terms and conditions of the order. Invoicing shall be carried out once the quotation or order form is signed.

The Client acknowledges that the delivery date put forward by the Vendor is indicative and not imperative, and may be different to that notified. It is up to the Client to ensure the accuracy of the information provided at the time of the order, for which it alone is responsible. It agrees to retain the order number assigned to it by the Vendor and which shall be requested, notably for any future claim. Any order is final, the Vendor shall have the possibility of claiming payment in full for such order in the event of cancellation and not reimbursing any down payments received.

The Client shall sign a delivery note at the time the material is delivered whereby it acknowledges that the goods have been well received. Under no circumstances shall a delay in delivery or performance related to force majeure give rise to compensation or lead to total or partial cancellation of the order.

### **Article 3: PRICING AND BILLING**

Except for any special provisions, the sales price is that stated in the quotation accepted by the Client according to the signature given on the order form. Prices indicated by the Vendor are denominated in Euros net of tax. The VAT rate is the rate in force on the day of the order in the Vendor's member state. It reserves the right to change its prices at any time, it being understood, however, that only prices indicated on the day the order is placed shall apply to the Client. Billing is carried out when the Client's order is finally confirmed. Accordingly, the invoice



corresponding to the material purchased is posted or sent by email to the Client. The invoice covers the whole price of the order. The quotation proposed by the Vendor may depart from the abovementioned billing conditions.

#### **Article 4: PAYMENT TERMS AND LATE PAYMENT PENALTIES**

Invoices are payable upon receipt and must be settled no more than 30 days following the date the invoice is issued.

Any invoice that remains unpaid by the due date shall bear interest for the profit of the Vendor, automatically and rightfully and without requiring any formal notification, at the rate fixed by the European Central Bank, increased by 10 points, in accordance with Article L441-6 of the French Commercial Code. Any invoice that remains unpaid by the due date shall immediately render payable, automatically and rightfully, billed amounts that are not yet due for payment. In accordance with Article L441-6 of the French Commercial Code and Decree No.2012-1115 of 2 October 2012, any unpaid invoice shall also lead to payment of a lump-sum compensation for recovery of 40 euros.

Any amount unpaid by the due date shall result in a penalty fixed at 15% of the amount of unpaid invoices, with a minimum payment of 150 euros, by way of a penalty clause. When the payment period of 30 days has elapsed, the invoice becomes payable and the Client shall be subject to the penalties provided above.

#### **Article 5: OBLIGATIONS**

##### **5.1: Vendor's Obligations**

The Vendor is subject to an obligation of means; it thus undertakes to use all its efforts and talents to perform its obligations as conscientiously and prudently as possible.

The Vendor agrees to clearly identify the goods through labelling or by affixing a distinctive sign on the goods, by transport documents or by any other means. Where appropriate, the Vendor agrees to forward to the Client a dispatch note that specifically identifies the goods.

The Vendor agrees to have the goods delivered on a date that has been accepted by the Client in the quotation.

The Vendor undertakes to provide the Client with goods that are compliant and free from any defects. The Vendor shall deliver the goods of which the quantity, quality, type and packaging meet with those provided in the quotation and the requirements included in the contract. The goods shall only be considered as compliant if they are fit for the purposes for which goods of the same type are normally used and fit for any special use that has been brought to the attention of the Vendor and the Client expressly or tacitly.

The Vendor agrees that the goods are packaged according to the usual method of packaging goods of the same nature or, failing this, in a manner to ensure their conservation and protection.

Nevertheless, the Vendor shall not be responsible for any lack of conformity that the Client knew about or could not have been unaware at the time the contract was concluded. The Client shall have a period of 7 days with effect from receipt of the goods to make known to the Vendor any possible lack of conformity.

The Vendor shall be responsible, as per these general terms and conditions of sale, for any lack of conformity that exists at the time of transfer of risks to the Client, even if this defect only appears after the preceding provisions.



The Vendor shall also be responsible for any lack of conformity that appears after the time indicated in the preceding paragraph and which can be blamed on the non-performance of any of its obligations, including a breach of warranty, on the sole condition that during a certain period the goods shall remain fit for their normal use or for a special use, or retain the specified qualities or characteristics.

Under the provisions of fulfilling its obligations, the Vendor agrees to provide the services under the conditions of availability, continuity and quality of service specified in these general terms and conditions.

#### **5.2: Client's Obligations**

The Client agrees, under the conditions laid down in the contract concluded between the parties, to pay the price of goods ordered. The Vendor reserves the right to consider payment from the Client as a condition for delivering the goods.

The Client undertakes to take delivery of the goods dispatched by the Vendor. In the same way, it agrees to fulfil any act that can be reasonably expected from it to allow the Vendor to deliver to and remove goods from the place specified.

The Client hereby accepts that in the event of a stock shortage of the product ordered, it may not make a claim; the Vendor shall do its best to deliver the product when it is back in stock.

#### **Article 6: RESPONSIBILITIES**

The obligations incumbent on the Vendor are the obligations of means. The latter shall incur its contractual liability in the event of negligence, omitting to perform its obligations or in the case of an unforeseen and unavoidable force majeure.

The parties shall be fully liable for their respective obligations. In the same way they shall incur joint responsibility for one another in the event of any contractual non-performance causing direct harm to the other party. The party that is a victim of the other's contractual non-performance may only claim compensation in the event of non-performance by the defaulting party, a loss sustained by the injured party and a causal connection between these two conditions.

Under no circumstances shall the Vendor be responsible for indirect or immaterial damages that may be sustained by the Client during fulfilment of the contract such as, for example, operational losses, lost business, or profit.

#### **Article 7: FORCE MAJEURE**

The Vendor shall not incur any responsibility when an event of force majeure causes non-performance of its obligations. Force majeure is understood to mean any event preventing the total or partial performance of the contract that cannot be overcome despite reasonable diligence carried out by the Vendor or its substitutes. The following events, without this list being exhaustive, shall be considered as a case of force majeure:

- Total or partial strikes,
- Epidemics, earthquakes, storms, floods, fires and explosions,



- Declared or undeclared wars, blockades or embargoes, riots, governmental restrictions or prohibitions,
- Blockage of means of transport or provisions, for any reason whatsoever,
- Blockage of telecommunications, including switched telephone networks, Transpac and Value-Added Networks,
- Lengthy power and network cuts.

#### **Article 8: TRANSPORTATION – TRANSFER OF RISKS – DELIVERY**

Transportation shall be carried out as per the Incoterms 2000 CPT: the Vendor shall choose the form of transport and pay for freight to the designated delivery location. The risk of loss or damage, as well as any potential increase in costs, shall be at the expense of the Client at the time the goods are handed over to the first carrier. The Vendor thus agrees to hand over the products ordered to the carrier and the necessary transport documents.

The loss or deterioration of goods arising after the transfer of risks to the Client shall not relieve the latter from its obligation to pay the price, unless these events are due to a direct fault of the Vendor.

Risks are transferred to the Client with effect from the handover of the goods to the first carrier for transmission to the Client, in accordance with the contract concluded between the parties. The fact that the Vendor is authorised to retain the documents representing the goods shall not affect the transfer of risks.

#### **Article 9: CANCELLATION AND TERMINATION**

In the event of non-performance of all or part of its contractual obligations by one or the other of the parties, the party sustaining the non-performance shall inform the defaulting contracting party by registered letter with acknowledgement of receipt of the nature of the non-performance. In the event that the latter omits to remedy this non-performance within a period of 30 days with effect from the date the notification is received, the sales contract shall be terminated automatically and rightfully with immediate effect. In the event of a fault of such a serious nature that continuation of business relations becomes impossible, the contract may be terminated immediately upon receipt of a notification sent by registered letter with acknowledgment of receipt by the party that is blamed for the fault.

Any termination carried out in accordance with the above paragraph shall take place without prejudice to any damages that the injured party subjected to the non-performance may claim from the defaulting party. Apart from any faulty non-performance, each party may terminate the sales contract notifying its intention to terminate this contract by registered letter with acknowledgment of receipt. As regards the Vendor, it may cancel the order and retain any downpayment as compensation, being 30% of the amount invoiced as security, without prejudice to any other rights. Moreover, the Vendor may terminate the sales contract without notice and without compensation for termination of the contract chargeable to the Vendor in the event of non-performance by the Client of such a serious nature that continuation of business relations becomes impossible.

#### **Article 10: GUARANTEES**

The Client shall acknowledge in advance that out of a batch of products delivered it may be that a part of the microsystems is not compliant due to the specific nature of the product. This



being the case, a noncompliance tolerance level of 10% of the batch delivered shall be accepted by the Client. It may not receive a partial credit note or replacement of the faulty microsystems if over 90% of the batch delivered are compliant.

The Client has a period of 7 working days with effect from the delivery date to make a claim by any means available. Failing this, the delivered products shall be deemed compliant and exempt from defects.

#### **Article 11: INTELLECTUAL PROPERTY**

The Client shall refrain from any action and any activity that may jeopardise, directly or otherwise, the Vendor's intellectual property rights. It agrees not to reproduce, transmit, sell or distribute products sold by the Vendor.

Brands, patents and any other intellectual or industrial property rights belonging to the products sold by the Vendor are protected. The Client shall refrain from jeopardising, directly or otherwise, the Vendor's intellectual property rights.

Any reproduction or representation, partial or total, of one of these rights, without express authorisation, is prohibited and may constitute counterfeiting, punishable under articles L. 335-2 and following of the French Intellectual Property Code.

#### **Article 12: RESERVATION OF OWNERSHIP CLAUSE**

In accordance with Law 80 335 of 12 May 1980, the Vendor retains ownership of the sold goods until the Client has paid for them in full. In the light of article L621-122 of the French Commercial Code, the Vendor shall have the right to claim ownership of the goods regarding the aforementioned article in the event of failure to pay for them.

#### **Article 13: JURISDICTIONAL COMPETENCE AND APPLICABLE LAW**

These general terms and conditions of sale are subject to French law.

If a dispute arises between the parties resulting from the performance or interpretation of this contract, the parties shall agree prior to any legal action that any claim shall be subject to prior formal notification by registered letter with acknowledgment of receipt.

Following a period of ten days after sending the letter referred to in the above paragraph, any party may then commence useful proceedings.

It is agreed between the parties that any legal proceedings relating to these terms and conditions falls within the exclusive jurisdiction of the Commercial Court of Lille Metropolis, even in the case of appeal in warranty or of multiple defendants.

#### **Article 14: NON-DISCLOSURE AGREEMENT**

The Client agrees, for a period of two years with effect from the sale of the product, not to disclose to third parties any information regarding the specific characteristics of the product. Moreover, it agrees to keep confidential all photographs, images and views carried out with the product's optical microscope or the electron microscope. It also agrees not to disclose any diagrams or plans of the product, nor information regarding the materials and dimensions of the product, without the express agreement of the Vendor.

#### **Article 15: SAMPLES AND PROTOTYPES**



Any sample or prototype supplied by Vmicro relating to the potential sale of a product and in the context of a cooperation contract or a research contract, is intended exclusively for experimental use. Sample and prototypes are supplied "as is", without any guarantee. The recipient shall bear all the risks resulting from the use of these samples or prototypes. Vmicro shall not assume any liability regarding the use of these samples or prototypes