

Terms & Conditions of Sale



MICREX CORPORATION

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Textiles / Paper / Nonwovens / Healthcare / **Service**
Softness, Bulk, Shrinkage Control, Stretch, Extensibility,
Drape, Hand, Decorative Effects, Absorbancy

General Provisions:

1. The terms and specifications on the documents attached hereto or on the reverse side hereof, together with these Terms and Conditions of Sale state the entire agreement between Micrex Corporation (hereinafter "Micrex") and the Buyer, notwithstanding any inquiry, purchase order or other statement of the Buyer, and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of these Terms and Conditions of Sale shall be binding unless in a writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable shall apply only to the specific instance for which the waiver is given. Failure of either party to insist upon strict performance of this agreement shall not be construed as a waiver of any of its terms or conditions.

2. No purchase order for machinery, equipment or parts ("Items") or for service and repairs ("Services") submitted by Buyer and no proposal for Items or Services submitted by Micrex shall result in a binding contract unless such order or proposal is approved in a writing signed by an authorized representative of Micrex at Micrex's main office at Walpole, Massachusetts, or in the case of parts, service or repairs by Micrex at its main office. Buyer's purchase order is incorporated in this agreement only to the extent of specifying the nature and description of the Items or Services, and then only to the extent consistent with Micrex's proposal or order acknowledgement; all inconsistent language in Buyer's purchase order is hereby rejected. In the event of any conflict between a Micrex proposal and its order acknowledgement, the latter shall prevail.

3. Buyer's submission of a purchase order shall be deemed to be an express acceptance of these Terms and Conditions of Sale notwithstanding language in the purchase order inconsistent therewith, and any inconsistent language in the Buyer's purchase order shall be deemed to be withdrawn.

4. Any assignment of this agreement by Buyer without Micrex's written consent shall be void.

Warranty; Extent and Limitation of Liability; Indemnification. THE FOLLOWING WARRANTY AND REMEDY ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY, BY TRADE USAGE OR OTHERWISE, INCLUDING, WITHOUT BEING LIMITED TO, WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SALE OR USE OF THE ITEMS OR SERVICES COVERED BY THESE TERMS AND CONDITIONS OF SALE.

In the case of machinery or equipment, Micrex warrants to the Buyer that for a period of one year from date of shipment to the Buyer, all machinery and equipment specified in the Proposal or order acknowledgement, will be free from defects in material and workmanship provided that the articles are used in a normal manner and are maintained and operated under proper conditions by competent, trained personnel using only such materials as may be specified in the proposal or order acknowledgement. The term "article" shall mean (a) any items or (b) any other piece of machinery or equipment of Buyer that is serviced or repaired by Micrex.

In the case of parts of Services, Micrex warrants to the Buyer that for the shorter of (a) one year from date of shipment of an article to the Customer or (b) six (6) months from the date that article is placed in operation by the Customer, the parts and services furnished by Micrex hereunder will be free from defects in material and workmanship for purposes of normal use and service provided that the articles are maintained and operated under proper conditions by competent, trained personnel.

To make claim under Micrex's warranty above set forth the Buyer shall (a) notify Micrex in writing within 15 days after the discovery of any alleged defect and in any event not later than thirty (30) days following expiration of the warranty period

provided above; and (b) if requested by Micrex, return all articles claimed to be defective to Micrex and the Micrex location designated by Micrex freight or postage prepaid, for inspection by Micrex; and (c) perform at Buyer's expense all work in connection with the removal of the defective articles and reinstallation following repair or replacement, and (d) if Micrex elects to make a refund of part or all of the purchase price, return the alleged defective articles to Micrex. If Buyer requests a replacement part from Micrex prior to opportunity for Micrex to inspect the alleged defective part, the replacement part will be billed to Buyer at Micrex's regular prices, and if upon inspection the allegedly defective part(s) are found to be defective, Micrex will issue an appropriate credit to Buyer.

The exclusive remedies for a breach of warranty by Micrex shall be as follows: Micrex will, at its discretion, either (a) replace or, at Micrex's option, repair without charge any part or parts of the articles which fail under normal use and service due to defects in workmanship or materials during the warranty period or (b) refund to Buyer that portion of the purchase price allocable to against, and to hold Micrex harmless from, any liability, claim, suit or other proceeding asserted or brought against Micrex by any other person arising out of the installation, operation or use of any article by Buyer or its successors or assigns.

Patent. In the event that suit is brought or threatened against the Buyer on the ground that the articles or any part thereof, as originally supplied by Micrex, infringe any now issued unexpired United States patent, the Buyer shall give Micrex full access to and authority to modify or replace the allegedly infringing item.

Prices and Terms of Payment. Prices of items shall be as stated on the reverse side or on attached sheets. In the case of Services the aggregate service price for parts, materials and labor called for by the work description on the reverse hereof shall be determined in accordance with Micrex's customary pricing policies and unless otherwise indicated any service price is an estimate only and is not binding upon Micrex.

The prices shown do not include any applicable duties or sales, use, excise or similar taxes or governmental charges now or hereafter in effect with respect to the articles or the shipment and/or use thereof, for which duties, taxes and charges Buyer shall have sole responsibility. Buyer will pay the purchase price when due, such payment being a condition precedent to Buyer's right to assert any claim or backcharge hereunder. If Buyer is in default of any payment provided for in this agreement, Micrex without prejudice to any other remedy may, at its option, either suspend its performance until the Buyer cures the default and extend the contract delivery date by a time at least equal to the period of suspension, or charge Buyer interest at the rate of one and one half percent (1-1/2%) per month on any past due payments. In addition, if Buyer requests a delay in manufacture or shipment of part or all of the articles for more than 30 days, or if Buyer fails to furnish essential technical information or specifications or to approve Micrex drawings (if such approval is required by Buyer) within 30 days of request by Micrex, Micrex shall have the right to (a) delay shipment for a period of time equal to Buyer's delay beyond such 30 days and (b) impose a charge of 1-1/2% per month on the value of the portion of this order shipment of which is so delayed. Buyer shall also pay the costs and expenses paid of incurred by Micrex in collecting overdue amounts.

Shipment. 1. Unless otherwise agreed shipment will be made FOB Micrex's plant. Unless special instructions are received by Micrex from Buyer in sufficient time before shipment, Micrex will use its reasonable judgment as to the best means and routing of shipment consistent with the nature of articles and requested delivery dates. Micrex shall not be responsible in any event for loss or damage resulting from the means of shipment and routing used. The Buyer agrees that the articles shall be at the risk of the Buyer from and after delivery by Micrex to the carrier at point of shipment. The Buyer agrees to make directly against the carrier any claim for loss or damage to articles while in transit.

2. All claims for shortages and for damaged articles must be made to Micrex in writing within ten (10) days after arrival of the shipment from Micrex at destination. For loss or damage in transit the Buyer must also file claim within the same period with the transporting common carrier and with its insurance company. If the shortage is due to failure to ship, or if an article is shipped in a damaged condition, Micrex's only obligation will be to make good or replace the damaged shipment FOB Micrex's plant, the Buyer to return the damaged article to Micrex upon Micrex's request, FOB Buyer's plant.

Time of Delivery. Micrex and the Buyer will use reasonable diligence to meet scheduled dates of shipment, delivery, acceptance of delivery and installation, but neither party shall be liable for failure to deliver or accept or for delay or installation or acceptance of the articles to be supplied herein caused by fire, flood, accident, raw material shortages, strike or other labor difficulty, war, civil insurrection, government order, allocation or regulation, transportation delays, delay in delivery or failure to deliver by Micrex's suppliers, subcontractors or other or any cause beyond the reasonable control of such party.

Safety Devices. Buyer shall inform Micrex on a timely basis of the need for specific safety devices including but not limited to guards or seals, consistent with the intended use of the articles and any requirement of federal, state or local law or regulation. Buyer shall have the responsibility of providing all safety devices necessitated by such use and requirements, if not provided by Micrex under this agreement, and shall in any case, whether or not the safety devices are obtained from Micrex, have the exclusive responsibility to have such devices installed and fully operational during use of the articles sold hereunder. Micrex shall have no responsibility for offering for sale and/or installation of safety devices or guards on articles to avoid injury to personnel while the articles are in operation. The Buyer agrees to indemnify Micrex against and save it harmless from any claim, suit, liability or expense incurred by Micrex with respect to persons injured directly or indirectly because of the Buyer's installation, maintenance or operation of the articles or because of the lack of devices on the articles to avoid injury to personnel while the articles are in operation, whether or not required by law or regulations of governmental bodies having jurisdiction.

Erection and Start-up. Unless otherwise expressly stipulated, all articles herein specified shall be erected and started up by and at the expense of the Buyer. Upon request of Buyer, and by separate agreement, Micrex will provide erecting and/or start-up engineers at Micrex's regular rates to function as technical consultants and coordinators in connection with the installation and erection of the articles herein specified. Such engineers will function only in an advisory capacity and shall have no control over or responsibility for the supervision or the quality of workmanship of such installation, erection or start-up, but failure by Buyer to comply with Micrex's Field Service Policy on erection, installation and start-up, if applicable, may impair Buyer's rights under Micrex's warranty of the articles.

The Buyer shall at its own expense build the foundations and furnish all labor, supplies and facilities required to erect and operate the articles and make all adjustments necessary for obtaining optimum performance.

Changes in Specifications. Changes in the specifications requested by the Buyer are subject to approval by Micrex in writing. In the event of any such change, Micrex shall be entitled to revise its price and delivery schedules to reflect such change. Micrex reserves the right to make changes in details of design, construction or arrangement of the articles shown or described in the specifications.

Corrective Work; Back Charges. In no event shall any work be done, or services or material be purchased or expense otherwise be incurred by the Buyer for the account of Micrex until after full particulars (including an estimate of material cost, amount and rate of labor required) have been submitted in writing and approved in writing by Micrex. Returned items will not be accepted unless Micrex has previously agreed to such return in writing and supplied written shipping instructions.

Drawings. Micrex does not supply detailed or shop working drawings of its articles. General assembly instructions, parts list, and only those general drawings necessary for erection and/or maintenance will be furnished.

Inspection; Tests. The articles will be given Micrex's standard inspection prior to shipment. If a test is to be made and witnessed by the Buyer or its agent, a special

charge of \$500 will be made unless included in the Proposal, and Micrex will not be liable if shipment is thus delayed. Any special tests will be undertaken only at additional cost to the Buyer, for which on request Micrex will furnish a quotation after review of the test procedures involved.

Cancellation. No order is subject to cancellation unless requested in writing by the other. In the event of cancellation by the Buyer, the Buyer shall pay to Micrex the greater of (a) the reasonable costs and other expenses incurred by Micrex prior to its receipt of the request for cancellation (including but not limited to allocable overhead and all commitments to its suppliers, sub-contractors, and others), together with all reasonable costs and other expenses incurred by Micrex in connection with such cancellation, plus an amount equal to 15% of the total of the foregoing or (b) 10% of the purchase or service price. Such payment shall be made within thirty (30) days after Micrex's written notification to Buyer of the amount thereof.

Return of Parts/Restocking Charges. In the event Buyer wishes to return a part purchased from Micrex, the Buyer shall first contact Micrex, advising Micrex of the reason for the proposed return and requesting permission to return the part. Micrex shall retain the right to determine whether a part may be returned, and the terms and/or conditions under which it may be returned, including such restocking charges as Micrex deems necessary.

Authorization to Make Necessary Repairs. When providing Services Micrex hereby reserves the right, but disclaims any obligation to correct or repair at Buyer's expense any condition or part of the articles, or the configuration thereof, which it deems necessary in order to eliminate or correct any hazardous or unsafe condition. Micrex shall promptly report to Buyer any such condition discovered by Micrex, Micrex's proposed actions with respect thereto and, if feasible, the estimated price therefore.

Fair Labor Standards Act. Micrex represents that any equipment manufactured and delivered by it hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended.

Limitation of Time for Bringing Action. Buyer agrees that if it acquires any right or rights to bring any action, suit or proceeding against Micrex as a result of any breach of this agreement, the Buyer shall be conclusively deemed to have waived and relinquished the same unless such action, suit or proceeding is commenced within one year after such right or rights arose.

Applicable Law and Jurisdiction. This agreement shall be deemed to have been made in and shall be governed by the laws of the Commonwealth of Massachusetts. The courts of such state shall have exclusive jurisdiction over all controversies arising out of or in connection with this agreement. The parties consent that process may be served upon them in any such action by registered mail at the address stated for Buyer on its purchase order, and upon Micrex at Walpole, Massachusetts, or personally within or without said state. If service is made in any manner other than personally within said state, the party served shall be entitled to a period of twenty additional days to answer over and above the time limited by law.

Separability. Each paragraph and provision of this agreement is severable from the entire agreement and if any provision of this agreement be held invalid the remainder of the agreement shall nevertheless remain in full force and effect.