

# Conditions of Use

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**MILTO HG**  
**Telekommunikation-, SAT- & PC-Service**  
**Conditions of Use for Privat Customers (E)**  
**Draft of July 2009**

## **Scope**

These general terms and conditions in their valid draft at the point of time that the contract was respectively concluded always apply for all the mutual claims from and in conjunction with a contract concluded between the client and MILTO HG during mail order transactions.

## **Participants**

MILTO HG concludes contracts with customers who are

- natural persons who have reached the age of 18 who are unreservedly able to enter into legal transactions as well as with
- legal persons.

## **Subject matter of the contract**

MILTO HG delivers the goods ordered by the customer or renders services following the acceptance of the offer. If MILTO HG should subsequently recognise that an error should arise on the part of MILTO HG e.g. with respect to a product, to a price or the ability to deliver then MILTO HG will inform the customer of this as soon as possible. The client can confirm the order once again under the changed conditions. If the customer does not confirm the order then the contract is deemed as not having come into existence.

## **Conclusion of contract/right to revoke**

The contract comes into existence by means of the acceptance of the customer order by MILTO HG. The customer waives the right to the receipt of a declaration of acceptance, Section 151 paragraph 1 of the Civil Code. The customer will either be informed of the conclusion of contract by MILTO HG or by means of a confirmation of order or at the latest by means of the delivery of the ordered goods or due to the offer or rendering of the service. If the customer orders via the Internet MILTO HG will, however, immediately confirm the receipt of the orders electronically.

To begin with a provisionally valid contractual relationship comes into existence by means of the order and its acceptance by MILTO HG due to the statutory right to revoke of the customer. For this reason the client can return the goods within 14 days of receipt without stating the reasons. It is sufficient if the goods are handed over to the post office or another dispatcher on the last day of the deadline. The return shipment is carried out at the risk and expense of MILTO HG unless the order value of the goods delivered is less than a net sum of Euro 40.00. In the latter case the return shipment costs must be borne by the client unless the customer has been delivered incorrect or faulty goods. Alternatively the customer also has the right within a period of 14 days following the receipt of the goods to send a written notice of revocation to Euro-BusinessNet, which does not require any justification. In this case the customer is obliged to return the goods and if necessary to assume the shipment costs as described above. The postage for the return shipment must always have been paid, if necessary the shipment costs will be reimbursed.

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## **Address for letter/parcel items**

MILTO HG  
Hoehenweg 43  
D-57339 Erndtebrueck, Germany  
Germany

The right to revoke does not apply for those special services of Oplectra GmbH in the terms and conditions of which a right to revoke is excluded, such as "auction goods", as well as for the following groups of goods:

- Goods, which are produced in accordance with customer specifications or which are clearly tailored to their personal needs
- Goods, which had to be specially procured and do not form part of the standard range due to a declaration of intent on the part of the customer.

If the customer submits an order for the following goods or groups of goods to MILTO HG then a right to revoke is also out of the question as these goods are not appropriate for a return shipment due to their properties:

- Goods, which are assembled in accordance with customer specifications made of standard components
- Special orders of the customer such as goods specially ordered for the customer etc

MILTO HG reserves the right, in the event of the return of used or damaged goods, to demand compensation for the decrease in value and for the value of the use of the goods, if the deterioration of the goods cannot exclusively be put down to its inspection. The customer can avoid these compensation claims if it only uses the goods to the extent that is necessary to inspect them.

## **Availability reservation**

If MILTO HG should determine following the conclusion of a contract that the goods or service ordered are no longer available or can no longer be delivered for legal reasons then MILTO HG can either offer goods or services that are equal in terms of the quality and price or cancel the contract. MILTO HG will reimburse payments already made immediately following the cancellation of the contract by MILTO HG or the customer.

## **Delivery**

The entire risk of damage during transit or loss of the goods when transported is covered up to an order value of euro 500.00 by die Post or United Parcel Service. Letter deliveries are fundamentally not insured and are sent exclusively at the customer's own risk.

We request that the customer inform us within 24 hours in the event of an incomplete delivery or damage to the delivery in transit. Visible damage (also to the packaging) must be immediately reported to the respective forwarding agent/delivery service/post office. If the customer refrains from doing this then it does not have any claims vis-à-vis MILTO HG.

## **Price**

The prices in the catalogue/online shop are final prices and are charged at the valid rate of VAT on the day of the invoicing. If a statutory increase in the rate of VAT takes place following the publication of the catalogue MILTO HG is entitled to charge the increased rate of VAT.

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In addition to the price for the goods the prices for supplementary services will be stated on the invoice: Packaging, shipment, insurance the respective valid rate of VAT at the time of invoicing etc.

In the case of orders via MILTO HG's homepages for private customers the catalogue prices do not apply but instead the prices stated on the homepage.

In the case of small orders with customers who are resident in a member state of the European Union and where the goods value is less than euro 250.00 the valid rate of VAT will then also be invoiced if the customer has a valid VAT identification number as the expenditure for the inspection is too great.

### Reservation of title

MILTO HG reserves the title of all goods, which are delivered to a customer until the final and complete payment of the goods delivered. If Optlectra exchanges goods by way of its warranty commitments then it will already be agreed today that the ownership of the goods to be exchanged will be transferred from the customer to MILTO HG or vice versa at that point in time at which MILTO HG has received the returned goods from the customer or the customer receives the replacement delivery from MILTO HG.

### Warranty

MILTO HG guarantees that the products have a potentially agreed quality at the time of the transfer or are free of material defects, i.e. that they are suitable for the uses required by the contract or are suitable for usual uses required by the contract, have qualities that are standard in the case of similar items and, which the purchaser can expect based on the type of item and/or announcements of MILTO HG or the manufacturer.

The customer must expect that the goods are complete and if there are any defects immediately upon receipt of the delivery and do this at the latest within one week of receipt, and in the event of a defect to immediately send a notice of defect. In the event of concealed defects the notification must be sent immediately after determining the concealed error and within the guarantee period.

The duration of the guarantee amounts to two years. It commences when the customer receives the goods. Expendable items, e.g. batteries do not fall under the guarantee.

In the event of a defect the customer can demand the removal of the defect or the delivery of an item that is free of defects in accordance with Section 439 of the Civil Code. In accordance with Section 439 MILTO HG can refuse the type of subsequent fulfilment demanded if it is only possible at disproportionate costs.

If during the course of the repair it is also not possible to rectify the defect at the second attempt then the client is entitled in accordance with section 439 of the Civil Code to demand the delivery of a faultless item or reduce the purchase price or cancel the contract. Cancellation of the agreement is out of the question if the defect is slight and inconsequential.

Compensation claims due to defects to the items are out of the question, unless MILTO HG fraudulently concealed the defects or gave a guarantee of the properties of the goods.

The requirement for the warranty claims is that the defect did not arise due to improper use or placing excessive demands upon it. If a defect only emerges later than 6 months since the delivery, then the customer must prove that the item was defective upon the transfer of risk. Otherwise MILTO HG is at liberty to prove that the item did not have any material defects upon delivery.

### Liability

MILTO HG, its management and its employees are liable in cases of positive violation of rights, culpa in contrahendo, default, impossibility of performance, tortious acts as well as for any other legal reason if

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guilty of intent and gross negligence. In the event of the negligent violation of contractual cardinal obligations (main contract obligations) or in the event of deceit as well as in the event of compensation claims in accordance with Section 437 paragraph 2 of the Civil Code MILTO HG is liable to the legally stipulated extent. Only in the event of violations of cardinal obligations is the liability for employees of MILTO HG restricted to the typical, foreseeable claims. Indirect claims are thus out of the question.

In the event of default the business customer has the right to cancel the contract as an alternative to compensation.

The scope of MILTO HG's liability in accordance with the Product Liability Act remains unaffected by this clause.

The aforementioned regulations convey the entire scope of liability of MILTO HG, its management and its employees. More far reaching liability is out of the question.

### **Choice of law**

German law is applied to the legal relations between MILTO HG and the customers and also to the respective terms and conditions. The application of the UN Convention on contracts for the International Sale of Goods of 11.4.1988 is not possible.

The aforementioned regulations do not have any effect upon the imperative regulations of the law of the state in which the customer has its ordinary residence, if and insofar as the customer has concluded a contract of sale, which cannot be assigned to the professional or commercial activities of the customer (consumer contract) and if the customer has carried out the necessary legal actions to conclude the contract of sale in the state of its ordinary residence.

### **Miscellaneous items**

The client is not entitled to set-off or retain the items unless the claim is undisputed or has been recognised by declaratory judgement.

The place of performance for payments is the business headquarters of MILTO HG. The place of performance for deliveries is either at MILTO HG's premises or the shipment location of the first sender who is active for MILTO HG.

If individual parts of this agreement should be totally or partially ineffective or subsequently lose their legal effectiveness then this shall not affect the effectiveness of the rest of the agreement. In this case the parties undertake to agree upon an effective regulation in place of the ineffective regulation, which insofar as this is legally possible, comes as close as possible to fulfilling the economic purpose pursued by the ineffective regulation whilst taking into account the interests of the parties expressed in this agreement. The same applies if the agreement reveals a legal loophole not foreseen by the parties.

The exclusive place of jurisdiction is D-57339 Erndtebrueck or another statutory place of jurisdiction selected by MILTO HG if the customer is a businessman as defined by the German Commercial Code or a public corporation.

In case of a contradiction of the German and the English terms, the German version shall control.

General terms and conditions as a PDF file (Adobe Acrobat ® )