



**MATZEN SCHLAUCH-TECHNIK**  
**HIGH-TEMP · HIGH-TECH · HIGH-FLEX**

## **General Terms and Conditions (GTCs)**

**-Sale-**

October 2020

### **§ 1 General – scope of application, form**

1. These General Terms and Conditions (GTCs) shall apply to all of our business relations with our Customers (hereinafter also referred to as “Purchaser”). The GTCs shall apply only if the Purchaser is an entrepreneur as defined in § 14 BGB [German Civil Code], a legal entity under public law, or special assets under public law.
2. Entrepreneur within the meaning of these GTCs shall be any individual or legal entity or partnership possessing legal capacity with which a business relation is entered into, and which acts in exercise of a commercial or independent professional activity. By contrast, consumers within the meaning of these GTCs shall be individuals with whom a business relation is entered into, and to whom no commercial or independent professional activity can be attributed.
3. The GTCs shall apply in particular to contracts regarding the sale and/or delivery of movable objects (“goods”), regardless of whether we produce the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB), and contracts regarding services such as inspection, development, testing or services. Unless provided otherwise, the GTCs in the version applicable at the time of placement of order by the Purchaser – in any case, however, in the version last submitted to the Purchaser in text form – shall also apply as a framework agreement to similar future contracts without our being required to refer to them in every single case.
4. Our GTCs shall apply exclusively. Any deviating, opposing or supplementary GTCs of the Purchaser shall become an integral part of the contract only if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, even if, for instance, we effect delivery to the Purchaser without reservation, having gained knowledge of the Purchaser’s GTCs.
5. Any agreements made with the Purchaser in the individual case (including collateral agreements, supplements and modifications) shall always take precedence over these GTCs. With respect to the contents of such agreements, a written contract and/or our written confirmation shall prevail, unless evidence to the contrary is provided.
6. Any declarations or notifications relevant in law and made by the Purchaser regarding the contract (e.g. the setting of a deadline, notification of defects, rescission or reduction) must be made in writing, i.e. in written or text form (e.g. by letter, email or fax). Legal requirements as to form and other evidence, especially if the legitimacy of the person making the declaration is in doubt, shall remain unaffected.
7. Any notes regarding the application of statutory provisions serve only to clarify. The statutory provisions shall therefore apply even without such clarification, unless they are directly modified or expressly excluded in these GTCs.

### **§ 2 Conclusion of contract**

1. Our offers are non-binding and subject to change without notice. This shall also apply if we have left to the Purchaser’s disposal any catalogues, technical documentations (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents, also in electronic form, in which we have reserved property rights or copyrights. Reasonable technical changes shall remain reserved. DIN EN ISO 1307 shall generally apply to tolerances on hoses, flexible bellows and shape-formed flexible ducts.
2. When ordering goods, the Customer declares its firm intention to acquire the ordered goods. We shall be entitled to accept the contractual offer included in the order within two weeks after receipt. Acceptance can be declared either in writing (e.g. by confirming the order) or by delivering the goods to the Customer.
3. If the goods are ordered electronically, the ordering party shall receive confirmation of receipt of the order. However, this does not constitute binding acceptance of the order. Confirmation of receipt can be combined with a declaration of acceptance.
4. The delivery period shall be agreed on an individual basis and/or shall be indicated by us upon receipt of order. The contract shall be concluded on the condition of accurate and timely self-delivery by our suppliers. This shall only apply if non-delivery is due to a reason beyond our control, in particular if a congruent hedging transaction is entered into. The Customer will be notified immediately if the service is unavailable. The service in return shall be reimbursed without delay.
5. If the goods are ordered electronically, the text of the contract shall be saved by us and sent to the Customer upon request, along with these GTCs.



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**§ 3 Reservation of title**

1. We reserve title to the purchased goods until full payment of all our present and future claims resulting from the purchase agreement and an ongoing business relationship (secured claims).
2. The Customer shall be obliged to treat the goods with care. If maintenance and inspection work is required, the Customer shall carry out this work on a regular basis at its own expense.
3. Until full payment of the secured claims, goods subject to reservation of title shall be neither pledged to the benefit of any third party, nor assigned as a security. The Customer shall be obliged to notify us immediately of any seizure of the goods by any third party, for example in the event of attachment, as well as of any damage to or destruction of the goods. Also, the Customer must notify us immediately if a petition to institute insolvency proceedings against the Customer's property is filed. The Customer shall also notify us without delay of any change in ownership of the goods as well as of any change in the Customer's place of residence.
4. In case of any behaviour of the Customer that violates the contract, in particular in case of default in payment, we shall be entitled to rescind the contract and to request the Customer to return the goods. The request to return the goods does not imply any declaration of rescission. Instead, we shall only be entitled to demand return of the goods and to reserve the right to rescind the contract. If the Purchaser fails to pay the purchase price due for payment, we shall be allowed to assert these rights only if we have previously set a reasonable deadline for payment by the Customer, which has expired fruitlessly, or if such deadline can be waived under the statutory provisions.
5. Subject to withdrawal pursuant to subparagraph (c) below, the Purchaser shall be authorised to continue selling and/or processing the goods subject to reservation of title in the ordinary course of business. In this case, the following provisions shall also apply.
  - (a) Reservation of title shall extend to products resulting from the processing, mixing or combining of our goods at their full value if we are the producer. If, in the case of processing, mixing or combining goods of any third party, the latter's property rights continue to exist, we shall acquire co-ownership in proportion to the invoice amounts of the processed, mixed or combined goods. Beyond this, the same shall apply to the resulting product as it does to the delivered goods subject to reservation of title.
  - (b) Any claims arising from reselling the goods or the product against any third party shall already be assigned by the Purchaser to us as a security either in whole or up to the amount of our co-ownership share in accordance with the above paragraph. We accept the assignment. The Purchaser's obligations set forth in paragraphs 2 and 3 shall also apply in view of the assigned claims.
  - (c) The Purchaser shall remain authorised, next to us, to collect the claim. We shall undertake not to collect the claim as long as the Purchaser meets its payment obligations vis-à-vis ourselves, the Purchaser shows no lack of ability to meet its payment obligations, and we do not assert the right of reservation of title by exercising a right pursuant to paragraph 3. If this is the case, however, we may demand that the Purchaser notifies us of the claims assigned to it and the related debtors, provide us with all information necessary for collection, forward to us the relevant documents, and notifies the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the Purchaser's authority to continue selling and processing the goods subject to reservation of title.
  - (d) If the realisable value of the securities exceeds the amount of our claims by more than 10%, we shall release securities at our own option and at the Purchaser's request.

**§ 4 Remuneration / Payment**

1. The offered price is ex supplier's works plus any applicable VAT. All costs of ancillary services, fees, public charges, taxes, duties and the like shall be borne by the Customer.
2. The offered purchase price shall be binding for a period of four weeks, calculated as of receipt of offer.
3. The Customer shall incur no additional costs when ordering goods using long-distance communication methods.
4. The Customer shall undertake to pay the purchase price within ten days after receipt of the goods. However, we shall always be entitled to effect delivery, either in whole or in part, only against advance payment – even within the framework of an ongoing business relationship. We must declare such reservation no later than upon confirmation of an order.
5. After expiry of this period, the Customer shall be deemed to be in default in payment. During the period of default in payment, interest shall be charged on the amount due at the applicable statutory default interest rate. We reserve the right to claim compensation for any additional loss caused by the delay. With respect to businesspeople, our claim for payment of commercial default interest (§ 353 HGB [German Commercial Code]) shall remain unaffected.
6. The Customer shall only have a right of offset or retention if its claim has been recognised by declaratory judgement or by us or if the claim is undisputed. In case of defective delivery, the Purchaser's counter-rights, especially those under § 7 No. 7 Sentence 2 of these GTCs, shall remain unaffected. The Customer shall only be allowed to exercise its right of retention if its counter-claim is based on the same contractual relationship.



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7. If it becomes apparent after conclusion of contract (e.g. on the grounds of a petition to institute insolvency proceedings) that our claim for the purchase price is at risk because of the Purchaser's lack of ability to meet its payment obligations, we shall be entitled under the statutory provisions to refuse performance and to rescind the contract (§ 321 BGB) after setting a deadline beforehand, if required. If a contract regards the production of non-fungible items (custom-made items), we are allowed to declare rescission of the contract immediately; the statutory provisions governing the lack of need for a grace period shall remain unaffected.

**§ 5 Intra-Community services**

1. If, according to the German turnover tax law, revenues generated from intra-Community services are not subject to turnover tax, the Customer shall be obliged, at our request and in line with our requirements, to cooperate with the issuance of any proof of delivery required in this connection under the German turnover tax law (such as confirmation of arrival) as well as other documents. The Customer shall also have such duty to cooperate if the delivery fulfils the requirements of an intra-Community triangular transaction pursuant to § 25b UStG [German Turnover Tax Act] and if we therefore need proof of delivery required under the German turnover tax law (e.g. confirmation of arrival or any other equivalent proof).
2. If the Customer fails to meet its obligation under paragraph 1, the turnover tax shall be calculated retrospectively and thus form an integral part of the purchase price.

**§ 6 Passing of risk**

1. If the Customer is an entrepreneur, the risk of accidental loss and accidental deterioration passes to the Purchaser upon delivery or, in case of sale to destination according to the Purchaser's instructions, upon delivery of the item to the forwarding agent, the freight carrier or any other person or institution in charge of dispatch. In case of sale to destination according to the Purchaser's instructions, the risk of delay passes to the Purchaser at the same time.
2. If acceptance has been agreed, it shall prevail for the passing of risk. In all other respects, the statutory provisions of the German law on works contracts shall apply to any agreed acceptance *mutatis mutandis*.
3. The same consequences shall arise if the Purchaser is in default in accepting delivery.

**§ 7 Warranty**

1. Unless provided otherwise below, the statutory provisions shall apply to the Customer's rights in case of defects in title and material defects (including false delivery and shortfall in delivery as well as improper assembly or defective assembly instructions). In every case, the special statutory provisions applicable to final delivery of the unprocessed goods to a consumer shall remain unaffected, even if the latter has processed the goods (supplier's recourse pursuant to § 478 BGB). Any claims arising from the supplier's recourse shall be excluded if the defective goods have been processed by the Customer or by another entrepreneur, e.g. by incorporating them into another product.
2. Our liability for defects shall be based in particular on the agreement made regarding the quality of the goods. Generally, only the product description, which is the subject of the individual agreement, shall be deemed an agreement regarding the quality of the goods. By contrast, public statements, recommendations or advertisements do not constitute representation regarding the quality of the goods.
3. If no quality has been agreed, it must be determined in accordance with the legal provision whether or not a defect exists (§ 434 Para. 1 Sentences 2 and 3 BGB). We shall assume no liability for any public statements made by the manufacturer or any other third party (e.g. advertising messages) which the Customer has not pointed out to us as being relevant to its purchase decision.
4. The Customer shall be obliged to test and check the goods for their suitability for the intended purpose or the intended application and to provide us with evidence of the testing, including the results obtained during testing as well as the tests carried out in the individual case. This shall not constitute any representation and warranty of quality. In the event that testing and inspection of the goods have not been carried out at all or properly or completely, any liability for defects and damages, in particular for consequential damages, shall be excluded.
5. The Purchaser's claims for defects presuppose that the Purchaser has fulfilled its legal duties of inspection and notification (§§ 377, 381 HGB). Where there are materials and other goods intended to be incorporated into another product or to be processed, inspection must always be carried out before their processing. If a defect is found at the time of delivery, during inspection or at any later time, we must be notified thereof in writing without delay. At any rate, notification of obvious defects must be made in writing within 14 days after delivery, and notification of defects that were not noticeable during inspection must be made within the same period after their identification. If the Customer fails to carry out proper inspection and/or notify us of a defect, our liability for the defect which has not been reported at all or in a timely manner or properly shall be excluded under the statutory provisions. Receipt of notice of defect by us shall be decisive in all cases. The Customer shall bear the full burden of proof regarding the conditions of entitlement, in particular regarding the defect itself, the moment in which the defect was identified, and the timeliness of the notification of defect. This shall not apply if we act wilfully or intentionally.
6. If the delivered item is defective, we can first choose to provide subsequent performance by removing the defect (subsequent improvement) or by delivering a defect-free item (substitute delivery). Our right to refuse subsequent performance in accordance with the legal requirements shall remain unaffected.



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7. We shall be entitled to make the subsequent performance owed to the Purchaser conditional on payment of the due purchase price by the Purchaser. The Purchaser, however, shall be entitled to retain a portion of the purchase price that is appropriate in proportion to the defect.
8. The Purchaser shall give us the time and the opportunity required to provide the subsequent performance owed to it, in particular to forward the goods complained about for inspection purposes. In case of any substitute delivery, the Purchaser shall return the defective item nor to install it once again if, originally, we had no obligation for installation of it.
9. In case of failure of subsequent performance or fruitless expiry of a reasonable time period to be set by the Purchaser to effect subsequent performance, or if such period can be waived under the statutory provisions, the Purchaser can rescind the purchase agreement or reduce the purchase price. However, no such right of rescission shall exist if there is negligible violation of contract, in particular where there is a negligible defect.
10. If, after failure of subsequent performance, the Customer chooses to rescind the contract due to a defect in title or a material defect, it shall have no further claim for damages due to the defect. If, after failure of subsequent performance, the Customer chooses to claim damages, the goods shall remain with the Customer if this is considered reasonable. Damages shall be restricted to the difference between the purchase price and the value of the defective item. This shall not apply if we have caused the contract's violation wilfully or intentionally.
11. If the Customer is provided with defective assembly instructions, we shall be obliged to provide it only with defect-free assembly instructions. This shall apply only if the defects in the assembly instructions are an obstacle to proper assembly.
12. Any guarantees in the legal sense shall not be provided by us to the Customer.
13. Even if there are defects, the Customer's claims for damages and/or compensation for wasted expenditure are valid only in accordance with the detailed provisions of § 8. In all other respects, such claims shall be excluded.

**§ 8 Default in performance due to force majeure etc. / reservation of proper and timely supply of incoming goods**

Serious events such as force majeure, regulatory instructions or urgent recommendations, strikes, unrest, wars or terrorist conflicts, other risks posing a danger to life and limb, natural catastrophes, pandemics, epidemics as well as other events that could not be foreseen when the contract was concluded (e.g. operational disruptions of any kind; difficulties in procuring materials and energy; delay in transport; lack of staff, energy or raw materials; difficulties in obtaining the required official permits; official measures; or non-delivery or improper or untimely delivery by suppliers), which we have not caused or for which we are not responsible, and which have unforeseeable consequences to the effecting of performance shall release the contractual parties from their duties to perform for the duration of the disturbances and to the extent of their effect, even if the contractual parties are in delay. This shall not imply any automatic dissolution of the contract. The contractual parties shall be obliged to inform each other of the impediment to performance and to adjust their obligations to the changed circumstances in good faith. Any liability for the inability to perform or delay in delivery due to serious events or events unforeseeable at the time of conclusion of contract shall be excluded.

**§ 9 Further liability**

1. Unless otherwise provided in these GTCs including the following provisions, we shall be liable for any violation of contractual and non-contractual duties in accordance with the statutory provisions.
2. We shall be liable for damage compensation within the scope of fault-based liability for any applicable legal reason if there is intent or gross negligence on our part. In case of simple negligence and subject to any statutory limitations of liability (e.g. care as applied in one's own affairs; minor infringement of obligation), we shall be liable only for
  - (a) damages resulting from injury to life, body or health;
  - (b) damages resulting from infringement of any material contractual obligation (any obligation the fulfilment of which allows for proper performance of the contract in the first place and on compliance with which the contractual partner regularly relies and may rely). In this case, however, our liability shall be limited to compensation of the foreseeable, typically occurring and direct damage.
3. The limitations of liability following from paragraph 2 shall also apply if we have infringed obligations by or in favour of any person for whom we are responsible under the statutory provisions. These limitations shall not apply if we have fraudulently concealed a defect or assumed a warranty for the quality of the goods, nor will they apply to any claims of the Customer under the German Product Liability Act.
4. In case of any infringement of obligation that does not constitute a defect, the Purchaser can rescind or terminate the contract only if we are responsible for this infringement of obligation. Any unrestricted right of termination by the Customer (in particular in accordance with §§ 650, 648 BGB) shall be excluded. In all other respects, the legal requirements and consequences shall apply.



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**§ 10 Statute of limitations**

1. In derogation from § 438 Para. 1 No. 3 BGB, the general period of limitation applicable to claims for material defects and defects in title shall be one year after delivery. If acceptance has been agreed, the period of limitation shall commence upon acceptance.
2. However, if the item is an object which has been used for a building structure in line with its usual manner of use and which has caused its defect (construction material), the period of limitation shall be five years after delivery (§ 438 Para. 1 No. 2 BGB) pursuant to the statutory provisions. Additional special statutory provisions regarding the statute of limitations (in particular § 438 Para. 1 No. 1, Para. 3; §§ 444, 445b BGB) shall also remain unaffected.
3. The aforementioned periods of limitation set forth in the sales law shall also apply to any contractual and non-contractual damage claims of the Purchaser arising from a defect in the goods, unless the application of the regular statutory period of limitation (§§ 195, 199 BGB) results in a shorter period of limitation in the individual case. However, any damage claims of the Purchaser pursuant to § 8 No. 2 Sentence 1 and Sentence 2(a) as well as under the German Product Liability Act shall become statute-barred exclusively in accordance with the statutory periods of limitation.

**§ 11 Copyrights**

1. All developments, construction and other proposals as well as documents prepared or made by us shall remain our (intellectual) property. Documents shall be returned to us upon request. The developments and construction proposals shall be treated confidentially and shall not be forwarded to any third party without our expressed consent. If this happens nevertheless, we shall charge the Customer a hundred times the amount of the object value as liquidated damages. Assertion of any further damage claims shall remain reserved. However, the Customer shall have the right to prove that little or no damage has occurred.
2. If we produce, or put into production, items on the basis of samples, models, drawings or other documents made available by the Customer, the Customer shall ensure that no property rights of any third party are violated. If any third party prohibits us from producing or delivering the items by referring to their property rights, we shall be entitled, without any obligation to review the legal situation, to discontinue any further activity and, if it is the Customer's fault, to claim damages from the Customer. In this context, the Customer shall undertake to indemnify us against any third party claims related thereto without delay.

**§ 12 Governing law and place of jurisdiction**

1. These GTCs and the contractual relationship between us and the Customer shall be governed by the laws of the Federal Republic of Germany excluding the international uniform law, in particular the UN Sales Convention.
2. If the Purchaser is a businessperson as defined in the German Commercial Code, a legal entity under public law or special assets under public law, the exclusive and international place of jurisdiction for all disputes arising either directly or indirectly from the contractual relationship shall be Lüneburg. The same shall apply mutatis mutandis if the Purchaser is an entrepreneur as defined in § 14 BGB. The same shall apply if the Customer's general place of jurisdiction is not in Germany, or if, at the time of filing a claim, the Customer's domicile or habitual place of residence is not known. In all cases, however, we shall also be entitled to file a suit at the place where we perform delivery in accordance with these GTCs and/or any overriding individually negotiated terms or at the Purchaser's general place of jurisdiction. Any overriding statutory provisions, in particular those regarding exclusive jurisdiction, shall remain unaffected.

**§ 13 Final provisions**

Should individual provisions of the contract with the Customer, including these GTCs, be or become ineffective either in whole or in part, the validity of the remaining provisions shall not be affected thereby. The provision that is ineffective either in whole or in part shall be replaced by a provision the economic intent of which comes closest to the ineffective provision.