



# GTC

## General Terms and Conditions of Sale

[dated July 2022]

# GTC

## 1. General Scope

- 1.1 Our deliveries and services are provided exclusively on the basis of our following General Terms and Conditions of Sale (hereinafter "**GTC**"). We do not acknowledge conflicting conditions or conditions of the Customer that deviate from these GTC or conditions that are not regulated in these GTC, unless we have expressly agreed to their validity in writing. Our GTC also apply if we carry out the delivery or service without reservation in the knowledge of the Customer's conditions that conflict with or deviate from our GTC or are not regulated in our GTC, or if the Customer in his inquiry, in his order or otherwise in connection with the Contract processing refers to the validity of its conditions.
- 1.2 In the context of ongoing business relationships, our GTC also apply to future transactions with the Customer, without the need for an express reference by us to their application in each case.
- 1.3 All agreements made between us and the Customer for the purpose of executing a contract are set out in writing in the respective contract and in these GTC.
- 1.4 Our GTC only apply to entrepreneurs within the meaning of §§ 310 Para. 1, 14 German Civil Code (BGB).

## 2. Offer - Offer Documents

- 2.1 Our offers are generally non-binding, unless expressly agreed otherwise.
- 2.2 If our offers are exceptionally binding, they are valid for a period of 14 days from the date of the offer, unless expressly agreed otherwise.
- 2.3 Customer orders are only binding for us if we have confirmed them in writing or conclusively accepted them through delivery or invoicing. Receipt of a delivery note by the Customer also counts as confirmation.
- 2.4 The Customer is obliged to carefully check the descriptions of our deliveries and services for their correctness, completeness and appropriateness. This applies in particular to project offers in which we have made assumptions on that we have based our calculation and our delivery and service description. If our assumptions are not correct, the Customer must inform us immediately so that we can correct our representation.
- 2.5 Unless expressly agreed otherwise, we are entitled to make changes to an agreed design or an agreed manufacture of our products insofar as these are minor changes or customary deviations and these are reasonable for the Customer, taking our interests into account. On the Customer's side, the yardstick for reasonableness is the impact on

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the value and functionality of the products, on our side technical, in particular production-related requirements.

- 2.6 Unless expressly agreed otherwise, we reserve the property rights, the intellectual property rights and copyrights to illustrations, drawings, calculations and other product-, application- or project-related documents that contain know-how worthy of protection, even if we leave them to the Customer. They may not be passed on, published or duplicated or used for any purpose other than the agreed purpose without our prior express written consent.

### 3. Prices - Terms of Payment

- 3.1 Unless expressly agreed otherwise, our prices for deliveries are "ex works" Marbach a.N., Federal Republic of Germany (Incoterms 2020) and do not include additional costs such as freight, packaging and insurance. Our offers are always valid in euros, unless expressly agreed otherwise.
- 3.2 Statutory value added tax is not included in the prices; it is shown separately on the invoice at the statutory rate on the day of invoicing.
- 3.3 The deduction of cash discount requires a special written agreement.
- 3.4 If the Customer is in default of acceptance and/or the shipment is delayed at the Customer's request, we are entitled to charge the Customer for the costs incurred by storing the goods affected by the default in acceptance/delay, but at least for each commenced week 0.5% of the price of the goods affected by the default of acceptance/delay, but no more than a total of 5%. The Parties are entitled to prove that higher, lower or no storage costs were incurred. The statutory rights to withdraw from the contract and to claim damages remain unaffected.

### 4. Payment - Retention and Offsetting – Default

- 4.1 Unless expressly agreed otherwise, the purchase price or the remuneration is due immediately after delivery or service without deduction of discount and to be paid in such a way that we can dispose of the amount on the due date. The Customer bears the costs of payment transactions.
- 4.2 The Customer is only entitled to rights of offsetting to the extent that his counterclaims are undisputed, have been legally established, are recognized by us or are in a close reciprocal relationship with our claim.

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- 4.3 The same applies to rights of retention. In addition, the Customer is only authorized to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.
- 4.4 If the Customer is in default of payment, we are entitled to demand default interest of 9 percentage points above the published base rate (cf. § 247 German Civil Code (BGB)).
- 4.5 If the Customer's financial situation deteriorates after the conclusion of the contract, or if facts exist or become apparent after the conclusion of the contract that justify the assumption that our claim to the consideration is jeopardized by the Customer's inability to pay, we are entitled to demand a security deposit from the Customer and/or to revoke granted payment terms, also for other claims. In the event that the Customer is unable to provide the required security within a reasonable period of time, we are entitled to withdraw from the contract. Existing claims from deliveries made or due to delay remain unaffected, as do our rights under § 321 German Civil Code (BGB).

## 5. Reservation of Self-Delivery - Execution of Deliveries - Delivery Times and Dates - Force Majeure – Default

- 5.1 Unless expressly agreed otherwise, delivery will be made "ex works" (Incoterms 2020) at the place named in our offer or acceptance, or, if no destination is given in our offer/our acceptance, "ex works" Marbach a.N., Federal Republic of Germany.
- 5.2 We shall be released from our delivery obligation if we (a) are not supplied with the correct goods/supplied parts ordered to fulfill the contract in good time and (b) have concluded a congruent purchase contract with the supplier/supplier. In such a case, we are also obliged to inform the Customer immediately and to immediately reimburse any payments already received from the Customer.
- 5.3 Our information on delivery and service times are generally not fixed dates (§ 323 Para. 2 No. 2 German Civil Code (BGB), § 376 German Commercial Code (HGB)).
- 5.4 Deadlines only apply if all technical questions are clarified in good time and all the Customer's obligations are fulfilled in a timely and proper manner (e.g., the provision of the necessary official certificates, insofar as the Customer is responsible for them, the approvals and other confirmations, including approval drawings and machine data and/or the payment of a deposit).

The exception of the unfulfilled contract remains reserved.

- 5.5 Events of Force Majeure, i.e., events over which we have no influence and for which we are not responsible, entitle us to postpone the delivery or service for the duration of the hindrance and a reasonable start-up time. This also applies if such events occur during an existing delay. It is irrelevant whether these circumstances occur with us, the delivery

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plant or one of our sub-suppliers. Should it not be possible for us to deliver the goods or to provide the service within a reasonable period of time due to such events of Force Majeure, the Customer and we have the right to withdraw from the contract or, if applicable, from the part of it that has not yet been fulfilled. Claims for damages due to such a withdrawal do not exist.

Events of Force Majeure include, in particular, official measures and orders (regardless of whether they are valid or invalid), shortages of raw materials or energy, significant operational disruptions, for example through the destruction of the company as a whole or important departments or through the failure of essential production facilities, serious transport disruptions, fires, floods, storms, explosions or any other natural disasters, mobilizations, wars, riots, pandemics and epidemics.

5.6 If the Customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage we have incurred, including any additional expenses. Further claims or rights remain reserved.

5.7 We are liable for delays in delivery in accordance with the statutory provisions, taking into account the restrictions set out in Section 9 of these GTC, with the following proviso:

If the delay in delivery is due to simple negligence and liability is not mandatory due to injury to life, limb or health or due to the assumption of a guarantee or a procurement risk, our liability for damage caused by the delay is limited in such a way that the Customer can demand 0.5% for each completed week of delay, but a maximum of 5%, in both cases of the price for the part of the delivery that could not be put into appropriate operation due to the delay.

This does not involve a change in the burden of proof to the detriment of the Customer. The Customer's statutory right of withdrawal remains unaffected.

## 6. Transfer of Risk - Shipping - Packaging - Partial Deliveries or Services

6.1 The risk of accidental deterioration and accidental loss of the goods passes to the Customer as soon as the goods have been handed over to him or to the person responsible for carrying out the delivery, but at the latest when they leave our plants - even if we have taken over the delivery -, if partial deliveries are made or if we have taken on other services. If the transport is delayed for reasons for which we are not responsible or because of the Customer's behavior, the risk is transferred to the Customer upon our notification that the goods are ready for transport.

6.2 Unless expressly agreed otherwise, "ex works" Marbach a.N., Federal Republic of Germany (Incoterms 2020) also applies to deliveries with regard to the transfer of risk.

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- 6.3 If we have agreed to ship the goods within the Federal Republic of Germany, we determine the shipping route and means as well as the forwarding agent and carrier. In this case, the risk passes to the Customer when the goods are handed over to a forwarding agent or carrier, but at the latest when they leave the warehouse or the de-livery plant. The obligation and costs of unloading are borne by the Customer.
- 6.4 If the goods are shipped abroad, the Customer determines the shipping route and means as well as the forwarding agent and carrier. The Customer takes care of this at his own expense. In this case, the risk passes to the Customer when the goods are handed over to a forwarding agent or carrier, but at the latest when they leave the warehouse or the delivery plant.
- 6.5 The Parties agree and the Parties are aware that when goods are shipped abroad, obtaining the necessary certificates and permits can take up to 6 months.
- 6.6 We insure the goods for each delivery domestically and abroad with transport insurance at the Customer's expense, unless the Customer rejects this transport insurance.
- 6.7 If the shipment is delayed through the fault of the Customer, the risk passes to the Customer from the point at which the goods were reported as ready for shipment.
- 6.8 We always deliver the goods packaged. We provide packaging, protective and/or transport aids at the Customer's expense according to our experience. We do not assume the Customer's costs for disposing of the packaging himself.
- 6.9 In the event of damage to or loss of the goods during transport, the Customer must immediately arrange for an assessment of the facts to be made by the carrier.
- 6.10 If this is reasonable for the Customer, we are entitled to make partial deliveries or partial services to a reasonable extent, which we can invoice separately in each case.
- 6.11 If we are obliged to carry out assembly, the Customer must ensure that assembly can begin within the agreed time, at the latest within 14 days of delivery, and can be carried out without interruption. The Customer is obliged to provide the internal means of transport required for assembly as well as electricity, water, etc. free of charge.
- 6.12 The Customer has no right to issue instructions to our employees or vicarious agents. The Customer's right to issue instructions within the framework of service or work contracts can only be exercised towards one of our legal representatives or a person designated as authorized to represent us.

## 7. Claims for Defects

- 7.1 The limitation period for claims for defects is 12 months, calculated from the transfer of risk. This does not apply if longer periods are stipulated in accordance with §§ 438 Para. 1 No. 2 (buildings and items for buildings), 479 Para. 1 (right of recourse), 634 a

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(construction defects) and § 438 Para. 3 (malice) German Civil Code (BGB) and for liability for damage resulting from injury to life, limb or health, as well as for liability for damage based on an intentional or grossly negligent breach of duty.

- 7.2 Complaints must be reported to us in writing immediately, but no later than one week after delivery (obvious defects) or discovery of the defect. Otherwise, the assertion of deficiency claims is excluded. Customer claims for defects also presuppose that the Customer has properly complied with the statutory inspection and notification obligations (in particular according to § 377 of the German Commercial Code (HGB)). We do not agree to a restriction of the Customer's statutory inspection and notification obligations (in particular according to § 377 of the German Commercial Code (HGB)).
- 7.3 If there is a defect, we are entitled to subsequent performance in the form of remedying the defect or delivering a new item free of defects.
- 7.4 The Customer agrees with us that if the Customer has a claim for subsequent performance (rectification or subsequent delivery), the more cost-effective option should be selected, provided the Customer does not suffer any disadvantages as a result.
- 7.5 Claims by the Customer for the expenses required for the purpose of supplementary performance, in particular transport, travel, labor and material costs, are excluded if the expenses increase due to the fact that the goods were subsequently taken to a place other than the place of delivery, unless the shipment corresponds to its intended use.
- 7.6 In the case of notifications of defects, payments by the Customer may only be withheld to an extent that is in reasonable proportion to the defects that have occurred. The Customer can only withhold payments if a justified notice of defects is asserted.
- 7.7 If the notice of defects is culpably wrong, we are entitled to demand reimbursement from the Customer for the expenses incurred by us as a result of the unjustified notice of defects.
- 7.8 Customer claims for defects do not exist
- in case of natural wear and tear
  - in the event of problems and/or damage occurring after the transfer of risk as a result of incorrect or negligent handling of the goods,
  - in the event of problems and/or damage occurring after the transfer of risk as a result of excessive stress or unsuitable equipment,
  - in the event of problems and/or damage occurring after the transfer of risk due to special external influences that are not provided for in the contract,
  - if improper changes or repair work are carried out by the Customer or third parties,
  - if the Customer or third parties make changes to the goods without our prior consent or without this being expressly permitted in our sales documents,

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- if the Customer or a third party equips the goods with accessories that are not approved or recommended by us.

7.9 Statutory recourse claims of the Customer against us only exist insofar as the Customer has not made any agreements with his Customer that go beyond the claims for defects based on German law.

7.10 Section 9 of these GTC applies to claims for damages.

### 8. Intellectual Property Rights - Defects of Title

8.1 Unless we have made a different agreement, we are obliged to provide the delivery and service free of third-party Intellectual Property Rights only in the country of the place of manufacture and delivery. "**Intellectual Property Rights**" within the meaning of these GTC are patents, utility models and designs, trademarks, including their respective applications, and copyrights.

8.2 If a third party raises legitimate claims against the Customer due to the infringement of Intellectual Property Rights through deliveries and services provided by us and used in accordance with the contract, we shall be liable to the Customer within the period specified in Section 7.1 of these GTC as follows:

8.3 We will, at our discretion and at our expense, obtain a right of use for the deliveries and services concerned, change them in such a way that the Intellectual Property Right is not violated, or exchange them. If this is not possible for us under reasonable conditions, the Customer is entitled to the statutory rights of withdrawal or price reduction. Our obligation to pay damages remains unaffected and is based on Section 9 of these GTC.

8.4 Our obligations regulated in this Section 8 of these GTC only exist if the Customer informs us immediately in writing about the claims asserted by a third party, does not acknowledge an infringement and we reserve the right to take all defensive measures and settlement negotiations. The Customer must support us to a reasonable extent in defending against the claims asserted.

If the Customer stops using the deliveries and services to reduce damage or for other important reasons, the Customer is obliged to inform the third party that the cessation of use is not associated with any acknowledgment of an infringement of Intellectual Property Rights.

8.6 Claims by the Customer are also excluded if the infringement of Intellectual Property Rights is caused (a) by special requirements of the Customer, (b) by an application that we could not foresee or (c) by the fact that the delivery or service was modified by the Customer or by a third party or used together with products not supplied by us.



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8.7 Claims by the Customer against us or our vicarious agents because of a defect in title that go beyond or differ from those regulated in this Section 8 of these GTC are excluded.

### 9. General Limitation of Liability

9.1 We are only liable for damages and reimbursement of futile expenses within the meaning of § 284 German Civil Code (BGB) (hereinafter "**Damages**") due to defects in the delivery or service or due to the violation of other contractual or non-contractual obligations, in particular due to tortious acts, only in the case of intent or gross negligence. The above limitation of liability does not apply to injury to life, limb or health, the assumption of a guarantee or a procurement risk, the breach of essential contractual obligations and liability based on the Product Liability Act (Produkthaftungsgesetz).

9.2 Compensation for Damages due to a breach of essential contractual obligations is limited to compensation for Damages typical of the contract, which we should have fore-seen as a possible consequence when the contract was concluded due to circumstances recognizable to us, unless there is intent or gross negligence or due to injury to life, limb or health or the assumption of a guarantee or a procurement risk or under the (Produkthaftungsgesetz).

9.3 The contractually typical, foreseeable Damage within the meaning of Section 9.2 of these GTC are:

- a. per claim: a maximum of 100% of the net purchase price of the respective contract concerned; and
- b. in the event of several claims relating to the Customer within a calendar year: a maximum of 100% of the net sales at which the Customer purchased products from us in the respective calendar year up to the occurrence of the claim.

9.4 Irrespective of the above Section 9.1 and Section 9.2 of these GTC, when determining the amount of the claims for Damages against us, the economic circumstances with us, the type, scope and duration of the business relationship, any contributions to the cause and fault of the Customer in accordance with § 254 German Civil Code (BGB) shall be adequately taken into account in our favor. In particular, the compensation payments, costs and expenses that we are obliged to bear must be in reasonable proportion to the value of the products delivered by us.

9.5 Insofar as liability for Damages towards us is excluded or limited, this also applies with regard to the personal liability for Damages of our employees, workers, employees, representatives and vicarious agents.

9.6 A change in the burden of proof to the detriment of the Customer is not associated with the above regulations of this Section 9 of these GTC.

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9.7 Essential contractual obligations within the meaning of Section 9.1 and Section 9.2 of these GTC are those obligations the fulfillment of which is essential for the proper execution of the contract and the fulfillment of which the Customer relied on and could also rely on.

### 10. Retention of Title

10.1 All delivered goods remain our property until all claims have been settled, in particular the respective balance claims to which we are entitled within the framework of the business relationship with the Customer (balance reservation). The goods covered by this retention of title are hereinafter referred to as "**Reserved Goods**". This also applies to future and conditional claims, e.g., from bills of exchange, and also if payments are made on specially designated claims. This reservation of balance finally expires with the settlement of all claims still open at the time of payment and covered by this reservation of balance.

10.2 If the Customer does not meet his payment obligations, if the Customer defaults on payment, if an application is made to open insolvency proceedings against the Customer's assets, if payments are suspended by the Customer or in the event of other breaches of duty by the Customer, we are entitled to take back the Reserved Goods. If we take back the Reserved Goods, this constitutes a withdrawal from the contract. The Customer is obliged to hand over the Reserved Goods.

10.3 The Customer may process, combine and mix the Reserved Goods in the ordinary course of business. Any processing, combination or mixing of the Reserved Goods is always carried out for us as the manufacturer within the meaning § 950 German Civil Code (BGB), without obligating us. The processed, combined and mixed goods are considered as Reserved Goods. If the Customer processes, combines or mixes the Reserved Goods with other goods, we are entitled to co-ownership of the new item in proportion to the invoice value of the Reserved Goods to the invoice value of the other goods used. If our ownership expires as a result of processing, combination or mixing, the Customer hereby transfers to us the ownership rights to which the Customer is entitled to the new inventory or the item to the extent of the invoice value of the Reserved Goods. The Customer keeps our (co-)ownership for us free of charge.

10.4 The Customer is revocably permitted to sell the Reserved Goods in the ordinary course of business under his normal terms and conditions. The Customer is not entitled to other disposals of the Reserved Goods.

10.5 The claims from the resale of the Reserved Goods or any other legal reason relating to the goods in our (co-)ownership, together with all securities that the Customer acquires for the claim, are already now assigned to us as security in the amount of the invoice

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value of the goods in question. These claims serve as security to the same extent as the Reserved goods. If the Reserved Goods are sold by the Customer together with other goods not sold by us, the claim from the resale is assigned to us in the ratio of the invoice value of the Reserved Goods to the invoice value of the other goods sold. When selling goods in which we have co-ownership shares, a part corresponding to our co-ownership share is assigned to us. If the Reserved Goods are used by the Customer to fulfill a contract for work, the claim from the contract for work and services is assigned to us in advance to the same extent.

- 10.6 We can demand that the Customer informs his Customers of the assignment, informs us of all assigned claims and their debtors and provides us with all information and documents that are necessary for collection.
- 10.7 In the ordinary course of business, the Customer is revocably entitled to collect claims assigned to us from the resale in his own name. We can revoke this authorization to collect if the Customer does not meet his payment obligations, if the Customer defaults on payment, if an application is made to open insolvency proceedings against the Customer's assets, if payments of the Customer are suspended or if the Customer breaches other obligations culpably.
- 10.8 An assignment of claims from the resale is not permitted, unless it is an assignment by way of real factoring, which is reported to us and in which the factoring proceeds exceed the value of our secured claim. Our claim becomes due immediately when the factoring proceeds are credited.
- 10.9 The pledging, assignment as security or other disposals of Reserved Goods is not permitted. The Customer must inform us immediately of any seizure or other impairments by third parties. The Customer bears all costs that have to be incurred to re-move access or to transport the Reserved Goods back, unless they are reimbursed by third parties.
- 10.10 We undertake to release the securities to which we are entitled at the Customer's request insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%; we are free in selecting the securities to be released.

## 11. Software Use

- 11.1 If software is included in the scope of delivery, the Customer is granted a non-exclusive right to use the software supplied, including its documentation. It is only made available to dem Customer for use on the delivery item intended for this purpose. The Customer is prohibited from using the software on more than one system.
- 11.2 The Customer may only copy, revise, translate or convert the software from the object

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code to the source code to the extent permitted by law (§§ 69a ff German Copyright Act (UrhG)). The Customer undertakes not to remove manufacturer information - in particular copyright notices - or to change them without our prior written consent.

- 11.3 All other rights to the software and the documentation including the copies remain with us or with the software supplier. Sublicensing is not permitted.
- 11.4 The HAINBUCH Software Conditions also apply; they may be downloaded on our homepage (<https://www.hainbuch.com/service/downloads/>). On request, we also leave them to the Customer.

### 12. Non-Disclosure Agreement

- 12.1 An integral part of these general terms and conditions is also the agreement on non-disclosure for download at [<https://www.hainbuch.com>].

### 13. Rental Conditions

- 13.1 An integral part of these general terms and conditions is also the agreement on rental conditions for download at [<https://www.hainbuch.com>].

### 14. Place of Performance - Place of Jurisdiction - Applicable Law

- 14.1 Unless otherwise agreed, the place of performance for all obligations of both parties is Marbach a.N., Federal Republic of Germany.
- 14.2 The place of jurisdiction for all legal disputes that fall within the substantive jurisdiction of the district courts (Amtsgerichte) is the district court Marbach a.N. and for legal disputes that fall within the substantive jurisdiction of the regional courts (Landgerichte), the regional court of Stuttgart. However, we are optionally entitled to bring an action at the Customer's registered office.
- 14.3 The law of the Federal Republic of Germany shall apply exclusively, excluding the conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

[dated July 2022]