



## General Terms and Conditions

Version 1.1, Stand 01.05.2023

### 1. Scope

1.1. These General Terms and Conditions (GTC) apply to business relationships between **HS Mechatronics GmbH** and its **customers**, who may be either natural or legal persons. These terms and conditions apply to the present business-related legal transaction and all future transactions, even if no express reference is made in individual cases, especially in **subsequent or additional orders**.

1.2. The version of the GTC valid at the time of contract conclusion applies and will be sent upon request by post or email.

1.3. Contracts are concluded **exclusively** on the basis of our GTC.

1.4. **Customer terms** or modifications/additions to our GTC require our express written consent.

1.5. Customer terms are not recognized even if we do not explicitly **object** to them upon receipt.

### 2. Offers and Contract Conclusion

2.1. Our offers are **non-binding**.

2.2. **Commitments**, assurances, and guarantees or agreements deviating from the GTC become binding only upon our written confirmation.

2.3. **Information** about our products and services found in catalogues, brochures, advertisements, or other media not directly attributable to us must be disclosed by the customer if relevant to their purchasing decision. Failure to do so renders such information non-binding unless explicitly confirmed in writing.

2.4. **Budgetary quotes are free of charge. Detailed cost estimates** are non-binding and **subject to a fee**.

### 3. Prices

3.1. Prices are **not to be understood as flat rates**.

3.2. For customer-ordered services not covered by the original order, reasonable compensation is due.

3.3. Prices are quoted exclusive of the applicable statutory **value-added tax** and ex warehouse. Packaging, transport, loading and shipping costs as well as customs duties and insurance shall be borne by the customer. We are only obliged to take back packaging if expressly agreed.

3.4. The customer is responsible for the proper and environmentally sound disposal of **waste materials**. If we are separately commissioned to carry out such disposal, the customer shall additionally compensate us to the agreed extent or, in the absence of a specific remuneration agreement, with appropriate compensation.

3.5. We shall be entitled, and upon the customer's request also obliged, to **adjust** the contractually agreed remuneration if there are changes of at least 5% in (a) labor costs due to laws, regulations, collective bargaining agreements, or works agreements, or (b) other cost factors necessary for the performance of services, such as procurement costs of materials used, based on recommendations of joint commissions or changes in national or global market prices for raw materials, exchange rates, etc., that have occurred since the conclusion of the contract. The adjustment shall correspond to the extent of the change in actual production costs between the time of contract conclusion and the time of actual performance, provided we are not in default.

3.6. In the case of continuing obligations, the remuneration shall be **value-adjusted** in accordance with the Consumer Price Index 2010 (CPI 2010), thereby resulting in an adjustment of the remuneration. The month in which the contract was concluded shall serve as the reference base.

3.7. **Travel expenses, daily and overnight allowances** will be charged separately. Travel time shall be considered working time.

### 4. Customer-supplied materials

4.1. If equipment or other materials are supplied by the customer, we shall be entitled to charge a **handling fee** amounting to 20% of the value of the supplied equipment or materials.

4.2. Such equipment and materials supplied by the customer are not covered by any **warranty**. The customer is solely responsible for the quality and operational readiness of such items.

### 5. Terms of Payment

5.1. **Unless otherwise agreed**, 40% of the remuneration shall be due upon conclusion of the contract, 40% upon delivery, and the remaining 20% upon completion of performance.

5.2. Any deduction of a **cash discount** shall only be permitted if expressly agreed in writing.

5.3. **Any payment references or allocations** indicated by the customer on bank transfer documents shall not be binding upon us.

5.4. If the customer is in default of payment under other contractual relationships with us, we shall be entitled to **suspend the fulfillment of our obligations** under this contract until the customer has fulfilled their outstanding obligations.

5.5. We shall then also be entitled to declare all claims for services already rendered under the ongoing business relationship with the customer as immediately **due and payable**.

5.6. In the event of a **payment delay**, even with regard to a single partial performance, any granted benefits (e.g. discounts, deductions) shall be forfeited and subsequently added to the invoice.

5.7. In the event of payment default, the customer undertakes to **reimburse** us for all necessary and appropriate costs incurred in the collection of outstanding amounts (such as reminder fees, collection charges, legal fees, etc.).

5.8. In accordance with § 456 of the Austrian Commercial Code (UGB), we are entitled to charge interest at a rate of **9.2 percentage points** above the base interest rate in the event of culpable **payment default**.

5.9. We reserve the right to assert any further claims for damages resulting from the delay.

5.10. The customer shall have the right to **offset** only to the **extent** that the counterclaims have been confirmed by a final court decision or expressly recognized by us.

5.11. In the event of culpable payment default, the customer undertakes to pay reminder fees of €50 per reminder, provided such fees are necessary and appropriate for the collection of the outstanding amount and are proportionate to the claim pursued.

### 6. Credit Check

6.1. The customer expressly consents to the transfer of their data exclusively for the purpose of creditor protection to the officially privileged creditor protection associations: Alpenländischer Kreditorenverband (AKV), Österreichischer Verband Creditreform (ÖVC), Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA), and Kreditschutzverband von 1870 (KSV).

### 7. Customer Cooperation Obligations

7.1. Our **obligation to perform** shall commence no earlier than once all technical details have been clarified, the customer has fulfilled the necessary technical and legal requirements (which we are happy to provide upon request), we have received agreed prepayments or security deposits, and the customer has fulfilled their contractual obligations of cooperation and advance performance, including but not limited to those specified in the following sub-items.

7.2. For installations carried out by us, the customer is obliged to ensure that work can begin immediately upon the arrival of our installation personnel.

7.3. The customer must, at their own expense, arrange for any necessary third-party **permits** as well as notifications and approvals from authorities. These requirements can be clarified with us in advance.

7.4. The customer shall provide, at their own cost, the necessary **energy** and water quantities required for the execution of the work, including trial operations.

7.5. For the duration of the performance, the customer shall provide us with **lockable rooms**, inaccessible to third parties, free of charge, for use by our workers and for storing tools and materials.

7.6. The customer is liable for ensuring that all **structural, technical, and legal requirements** for the deliverable or purchase item are met, as described in the contract or in any pre-contractual information provided, or that should have been known to the customer based on relevant technical expertise or experience.

7.7. The customer is also responsible for ensuring that technical systems, such as supply lines, wiring, networks, etc., are in technically proper and operational condition and are compatible with the works or goods we provide.

7.8. We are entitled, but not obligated, to inspect and **adjust** such **systems** for a **separate fee**.

7.9. In particular, before the start of installation work, the customer must provide—without being requested—all necessary information regarding the location of **concealed electrical, gas, and water lines or similar systems**, emergency routes, other structural obstacles, potential hazards, and the required structural data.

7.10. Order-specific details of the necessary information can be requested from us.

7.11. The customer bears sole responsibility for the design and functionality of **parts provided** by them. We are not obliged to review any documents, data, or instructions provided by the customer—beyond compiling a technical construction dossier and certifying compliance with the Machinery Directive or any other applicable regulations—with regard to the deliverable, and any liability on our part in this respect is excluded. The obligation to issue such certification may be contractually transferred to the customer if they place the deliverable on the market.

7.12. The customer is not entitled to **assign claims** or rights arising from the contractual relationship without our prior written consent.

### 8. Performance Execution

8.1. We are only obliged to consider **subsequent changes or additions** requested by the customer if they are technically necessary to achieve the purpose of the contract.

8.2. **Minor, objectively justified changes** to our performance that are reasonable for the customer shall be deemed pre-agreed.

8.3. If the order is **amended or supplemented** for any reason after it has been placed, the delivery/performance period shall be extended by a reasonable amount of time.

8.4. If the customer requests execution of performance within a **shorter period** after conclusion of the contract, this shall constitute a change to the contract. This may lead to overtime and/or increased costs due to expedited procurement of materials, and the fee shall increase proportionally to the additional effort required.

8.5. **Objectively justified partial deliveries and services (e.g., due to system size, construction progress, etc.) are permissible and may be invoiced separately.**

### 9. Delivery and Performance Deadlines

9.1. Delivery and performance deadlines and dates are **only binding** on us if they have been agreed upon in writing. Any deviation from this written form requirement must also be made in writing.

9.2. Deadlines and dates **shall be extended** in the event of force majeure, strikes, unforeseen delays not caused by us (e.g., delays from our suppliers), or other comparable events beyond our control, for the duration of such events. This does not affect the customer's right to withdraw from the contract if the delay makes adherence to the contract unreasonable.

9.3. If the commencement or execution of performance is **delayed** or interrupted due to circumstances attributable to the **customer**—particularly due to failure to comply with the cooperation obligations under Section 7—the performance deadlines shall be extended accordingly, and completion dates shall be postponed.

9.4. We are entitled to charge a reasonable fee for **storing materials**, equipment, or similar items at our facility if such storage becomes necessary as a result. The customer's obligation to pay and their duty to accept performance remain unaffected.

9.5. If the customer wishes to withdraw from the contract due to delay, they must first **set a grace period** by means of a registered letter, simultaneously threatening to withdraw from the contract.

#### **10. Transfer of Risk**

10.1. The risk shall transfer to the commercial customer as soon as we make the purchased item, material, or work available for collection at our facility or warehouse, deliver it ourselves, or hand it over to a carrier.

10.2. The customer approves any customary method of shipment.

#### **11. Default of Acceptance**

11.1. If the customer is in default of acceptance for more than six weeks (e.g., refusal to accept delivery, delay in advance performance, or failure to call off within a reasonable time for on-call orders), and if the customer fails to remedy the attributable circumstances despite a reasonable **grace period**, we may—while the contract remains in effect—reallocate the equipment and materials specified for performance, provided we can procure replacements within a timeframe appropriate to the circumstances.

11.2. In case of default of acceptance, we are also entitled, while insisting on contract performance, to store the goods at our premises and charge a **storage fee** in accordance with Section 9.4.

11.3. In the event of a justified withdrawal from the contract, we may charge a flat-rate **compensation** of 35% of the gross contract value without the need to prove actual damage.

11.4. We reserve the right to assert claims for higher actual damages.

#### **12. Retention of Title**

12.1. The goods delivered, installed, or otherwise handed over by us shall remain our property until full payment has been received.

12.2. **Resale** is only permitted if we have been notified in advance, including the name and full address of the purchaser, and we have approved the sale. In the event of our approval, the customer's claim for payment shall be deemed assigned to us at that point.

12.3. Until the purchase price or fee has been paid in full, the customer must **record this assignment** in their accounting and on their invoices and inform their respective debtors accordingly. Upon request, the customer must **provide** us with all documents and information required to enforce the assigned claims.

12.4. If the customer is in default of payment, we are entitled—after setting a reasonable deadline—to reclaim the goods under retention of title.

12.5. The customer must notify us immediately in the event of insolvency proceedings or the seizure of our goods under retention of title.

12.6. The customer expressly agrees that we may enter the premises where the goods under retention of title **are located** in order to enforce our ownership rights.

12.7. The customer shall bear all necessary and appropriately incurred **costs** related to legal enforcement.

12.8. The **enforcement of the retention of title** shall not be considered a withdrawal from the contract unless expressly stated.

12.9. We may freely and optimally **resell** any reclaimed goods under retention of title.

12.10. Until full payment of all our claims, the delivered or purchased item must not be pledged, assigned as security, or otherwise encumbered with **third-party rights**. In case of seizure or any other third-party claims, the customer must indicate our ownership rights and notify us immediately.

#### **13. Third-Party Intellectual Property Rights**

13.1. For deliverables produced according to the **customer's documentation** (design specifications, drawings, models, or other details), the customer assumes full responsibility for ensuring that the production of such

items does not infringe upon the intellectual property rights of third parties.

13.2. If third-party rights are nevertheless asserted, we are entitled to suspend **production** of the deliverables at the customer's risk until such rights are clarified, unless the claims are clearly unfounded.

13.3. The customer shall **indemnify** and hold us **harmless** in this regard.

13.4. We are entitled to request reasonable **advance payments** from commercial customers to cover potential legal expenses.

13.5. We may also claim reimbursement for necessary and useful **expenses** incurred.

13.6. We are entitled to request reasonable **advance payments** to cover any legal proceedings.

#### **14. Our Intellectual Property**

14.1. Deliverables and related execution documents, **plans**, sketches, cost estimates, and other documentation, as well as software provided by us or created through our contribution, remain our intellectual property.

14.2. Their use—including disclosure, duplication, publication, distribution, even in part—as well as imitation, modification, or exploitation, requires our express **consent**.

14.3. The customer further undertakes to maintain **confidentiality** with respect to any knowledge obtained through the business relationship.

#### **15. Warranty**

15.1. The **warranty period** for our services is one year from the date of handover.

15.2. Unless otherwise agreed (e.g., formal acceptance), **handover** is considered to be the point of completion, or at the latest, when the customer assumes control of the service or unreasonably refuses acceptance. From the date of notification of completion, the service is deemed to have been accepted unless a justified refusal is issued.

15.3. If a joint handover is agreed and the customer fails to attend the scheduled date, acceptance is deemed to have occurred on that day.

15.4. **Rectification** of a claimed defect does not constitute an acknowledgment of the defect.

15.5. The customer must always **prove** that the defect existed at the time of handover.

15.6. To remedy defects, the customer must **provide access** to the installation or equipment without undue delay and allow for inspection by us or an appointed expert.

15.7. **Complaints** or defect notifications must be submitted in writing to our company address without delay (no later than 15 working days) and must include a **detailed description of the defect** and possible causes. The defective goods or services must be made available by the customer if reasonably possible.

15.8. If **defect claims** are unfounded, the customer must reimburse us for costs incurred in verifying the defect or performing the repair.

15.9. Any **use or processing** of defective goods that may cause further damage or hinder the identification or correction of the cause must be discontinued immediately by the customer, unless doing so is unreasonable.

15.10. We are entitled to carry out or arrange for any **inspection** we deem necessary, even if such inspection renders the goods or items unusable. If the inspection reveals that we are not at fault, the customer must bear the costs for the inspection at a reasonable rate.

15.11. Transport and travel costs related to defect rectification shall be borne by the customer. Upon request, the customer must provide the required workforce, energy, and space free of charge and assist as outlined in Section 7.

15.12. The customer must allow us at least **two attempts** to rectify any defect.

15.13. Any **request for rescission** (contract cancellation) may be avoided by us through improvement or reasonable price reduction, provided the defect is not substantial or irreparable.

15.14. If the deliverables are produced based on customer-provided data, drawings, plans, models, or other specifications, we only warrant proper execution according to the agreed specifications.

15.15. A defect is not constituted by the fact that the deliverable is not fully suitable for the agreed use, if this results solely from **deviating** actual conditions from the **information** provided to us at the time of performance and the customer failed to fulfill their cooperation duties as set out in Section 7.

15.16. Likewise, a defect is not constituted if the **customer's technical infrastructure**—such as supply lines, wiring, networks, etc.—is not in technically sound and operational condition or is incompatible with the delivered items.

#### **16. Liability**

16.1. We shall only be liable for **financial losses** arising from breaches of contractual or pre-contractual obligations, including impossibility, delay, etc., in cases of intent or gross negligence due to technical specifics.

16.2. Our liability is **limited** to the maximum amount covered by any liability insurance we may have in place.

16.3. This limitation also applies to damage to **items we have taken for processing**.

16.4. Claims for damages must be asserted in court within two years, otherwise they shall **expire**.

16.5. The limitations or exclusions of liability also apply to claims against our **employees**, representatives, and agents for damage they cause to the customer without being contractually bound to them.

16.6. We shall not be liable for damage caused by **improper handling** or storage, overuse, failure to follow operating or installation instructions, defective assembly, commissioning, maintenance or servicing by the customer or third parties not authorized by us, or natural wear and tear, if such events were causally related to the damage. The same exclusion applies to the omission of necessary maintenance.

16.7. If and to the extent that the customer is entitled to claim **insurance benefits** for damage for which we are liable—under their own or third-party insurance policies (e.g., liability, comprehensive, transport, fire, business interruption)—they are obligated to do so, and our liability is limited to any disadvantages resulting from the use of such insurance (e.g., higher premiums).

16.8. We warrant only those product properties that can be expected by the customer—based on their knowledge and experience—in view of approval regulations, user manuals, and other product-related instructions and notices (especially for inspection and maintenance) provided by us, the manufacturer, or importer. Customers acting as resellers are required to obtain adequate insurance for **product liability** claims and shall hold us harmless from any recourse claims.

#### **17. Severability Clause**

17.1. If individual provisions of these General Terms and Conditions are invalid, the validity of the remaining provisions shall remain unaffected.

17.2. The parties agree to replace **the invalid provision with a valid one** that most closely reflects the intended economic result in accordance with standard industry practice, based on the perspective of honest contracting parties.

#### **18. General provisions**

18.1. **AUSTRIAN LAW SHALL APPLY.**

18.2. **THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG) IS EXCLUDED.**

18.3. **THE PLACE OF PERFORMANCE IS OUR COMPANY HEADQUARTERS (TULBING).**

18.4. **The place of jurisdiction for all disputes arising from this contract or future agreements between us and the customer shall be the court with local jurisdiction over our headquarters.**

18.5. **Changes** to the customer's name, company name, address, legal form, or other relevant information must be communicated to us in writing without delay.

18.6. The current uncertainty due to the COVID-19 pandemic (force majeure) is acknowledged by both parties and has been considered in the basis of this agreement. The customer expressly agrees to the legal consequences (penalty according to Section 11.3) in case of default of acceptance, as well as to the cancellation fee in case of withdrawal (Section 11).