

General Terms and Conditions of *mechatronic* systemtechnik gmbh

- 1. Scope of application**
 - 1.1. All deliveries of products and performance of services made by *mechatronic* on the basis of orders shall be governed by this general terms and conditions (hereinafter referred to as "GTC") in the version which is valid at the time of the respective order (<http://www.mechatronic.at>). The *Customer* accepts this general terms and conditions with the placement of the order
 - 1.2. Amendment or additional agreements to these GTC shall not be valid unless confirmed in writing.
 - 1.3. The final contract governs the order confirmation and/or a separate agency contract with the relevant specifications. Contractual terms and / or general terms and conditions of the customer shall not apply and shall not amend these GTC.
 - 1.4. If individual provisions of this general terms and conditions are invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. The Parties shall agree to replace the invalid provision with a valid provision that comes close to fulfilling the sense of the purpose originally intended. Additional or contracting terms and conditions on the part of our contracting Parties shall apply only if *mechatronic* expressly acknowledged them in writing.
- 2. Offers**
 - 2.1. *Mechatronics`* offers are not binding.
 - 2.2. Illustrations, statements, descriptions and specifications in technical documentations, advertising material and other representations are not binding; overall dimensions are approximate values. A commitment of special characteristics is not given. Special characteristics require *mechatronics`* express written explanation.
 - 2.3. *Mechatronic* reserves all rights for images, drawings, calculations and other databases or documents. Any disclosure to third Parties shall require *mechatronics`* express written consent
- 3. Conclusion of contract**
 - 3.1. *Mechatronic* offers in their entirety are subject to change without notice and are not binding. Each order requires an order confirmation. The sending or handing over of the ordered products to the *Customer* is regarded as conclusion of a contract.
 - 3.2. The *Customer* is aware that the internet does not represent a secure medium of communication and that data transferred via the internet may either become publicly known or subject be changed by third Parties. *Customer* bears the risk, that datas sent by him are

not received in same form and or with the same content at Mechatronic. Mechatronic shall rely, that all datas received have been sent in that form and with that content by the *Customer*.

4. Prices

- 4.1. If not agreed mutually otherwise the prices in the offer are ex works including loading, no delivery costs no other delivery services are included.
- 4.2. For supplies outside of Austria *mechatronic* charges the applicable export and import fees. Packing, carriage charges, insurance, tariffs and other costs of additional services will be charged additionally.
- 4.3. The EURO is agreed as applicable currency.

5. Terms of payment

- 5.1. Unless otherwise agreed the products or services to be supplied have to be paid without deduction to *mechatronics`* bank account as follows:
 - a) 40% prepayment within 14 days of the arrival of our order confirmation or delivery contract so called "Liefervertrag";
 - b) 60% within 14 days from the date of notification of readiness for dispatch, anyway before loading the products.

Bills of exchange or checks are accepted but only as security until full payment.

- 5.2. Discount is granted only if it is explicitly shown in the invoice.
- 5.3. If the *Customer* is in default with at least to instalments in the case of part payments *mechatronic* shall be entitled to demand the entire claim, including amounts from other invoices, and statutory default interests.
- 5.4. If the financial condition of the *Customer* changes significantly, for example due to enforcement measures by third Parties, protests of a bill or a check protest, insolvency application *mechatronic* can stop the service to work with immediate effect to obtain the claim. This is also legitimate, if this situation exists already in contradicting and *mechatronic* had no knowledge about it. If the payment pending is not completed within the described period, *mechatronic* has the right of withdrawal from the contract. The right to ask for damages remains upright.
- 5.5. In case of default of payment or other services on the part of the *Customer*, *mechatronic* is entitled – irrespective of other rights – to withhold all deliveries pending under the current delivery order until the agreed payment is done or to withdraw from the contract after expiry of a reasonable period of days and/or to demand compensation for non – fulfilment. In this case the *Customer* is obliged to immediately return the supplied products to *mechatronic* at his costs. *mechatronic* reserves the right to asset compensation claims for deposition, wear and

- tear reimbursement of its own transport costs and other costs.
- 5.6. In the event of delayed payment *mechatronic* will charge default interest at the statutory level in equivalence with § 456 UGB. Collection fees and default interest at the statutory level will be charged starting with the first reminder. Should a second reminder become necessary, all future deliveries will be carried out only against advanced payment or cash on delivery. After an unsuccessful second reminder, *mechatronic* is entitled to assign the claim to a debt collection agency or a lawyer. In case of breach of these contractual obligations the *Customer* undertakes to reimburse *mechatronic* for the necessary costs for the appropriate pursuance of the claims. The *Customer* has to reimburse € 5, 00 for each reminder and a further € 25,00 for maintaining evidence of the contractual obligations in the debt collection process. In addition, the costs of the debt collection agency are to be borne up to maximum collection fee as specified in the restrictive ordinance and the cost of lawyers in accordance with the lawyers fees act.
- 5.7. The rule of prohibition of set-off applies. The *Customer* shall only be entitled to set off his debt against the event of *mechatronics'* insolvency or against counterclaims, which are legally connected with its obligation, which where established by court or have been acknowledged by us.
- 5.8. In the event that the customer does not comply with his payment obligations, we reserve the right not to extend the limited Software License, this until full payment by the customer.
- 6. Delivery date, delate delivery, default in acceptance**
- 6.1. The delivery period begins with the date of the deposit to our bank account. (5.1 a). Partly deliveries are permitted in so far as reasonable.
- 6.2. The delivery period is extended for the duration of hindrances that occur due to circumstances without the intention of the parties, such as force majeure, unforeseeable operational breakdowns, official interventions, transport and customs clearings delays, transport damages, breakdown of important production components in working conflicts, natural disasters, war and similar.
- 6.3. In the event of delay of *mechatronic* the following shall apply:
- The default compensation shall not exceed 5% of the contract value.
 - In the case of grossly negligent or intended breach of contract for with *mechatronic* is responsible, the liability for damage, cost by default shall be limited to the foreseeable typical damage that occurs.
- 6.4. If acceptance by the *Customer* is delayed *mechatronic* is entitled to

store the products at *Customers'* expense and risk. The same does apply, if the *Customer* subsequently requires, that the products be supplied and consigned at a date later than agreed. All this does not have any influence on the payment obligations of the customer.

7. Transfer of risk

Acceptance, transfer of risk and performances unless expressly otherwise agreed, shall happen "ex works". In cases according to 6.4 the risk shall pass at the time of readiness for shipping.

8. Assembling, start up operations, acceptance

8.1. Assembling or start of operation of products supplied by *mechatronic* takes place only if agreed upon in writing. Scope, location and time of these needs to be agreed in writing ahead. The *Customer* has to pay for sent staff, hours of work, food, accommodation and traffic costs according to tariffs of *mechatronic*. Travel time is regarded as working time.

8.2. Products to be assembled or to be taken into operation must be provided at the installation facilities in due time by the *Customer*. The installation facility must be available for *mechatronic* staff at all times. The installation facility must correspond to the respective installation work and equipment requirements. The *Customer* shall provide the necessary tools (ex-

cept for *mechatronic* special tools) and jigs, measuring instruments, electricity, materials and working funds in sufficient quantity and quality at his own expense.

8.3. If acceptance is agreed it shall be done at the presence of representatives of both parties with agreed terms in advance. If no conditions are fixed *mechatronic* shall define it according to industry standards. Start, duration and result of the site acceptance test shall be protocolled. The protocol must be signed by representatives of both parties. In case of different opinions, both should be recorded. If the *Customer* takes the products into operation on his own, acceptance is given. This is also the case, if the acceptance is not done within 6 weeks for reasons *mechatronic* is not responsible.

8.4. The usage of the sold/licensed software is initially limited. The software shall be available for an unlimited period, if the customer has fulfilled his payment obligations complete and on time.

9. Material defects and defects of title

9.1. Material defects:

9.1.1. In the event of any defects due to reasons that existed already before transfer of risk, *mechatronic* shall provide warranty at its choice, by repairing the defects, granting price reduction or supplying defect-free replacement. The *Customer* must inform *mechatronic* in writing without delay after

becoming aware of any defects and their effects. Replaced parts shall belong to *mechatronic*. *Customer* shall give *mechatronic* reasonable time and opportunity and appropriate access to the facility. Only in urgent cases endangering operational safety or in order to prevent unreasonably high damages, *Customer* shall have the right to remedy said defect in consultation with *mechatronic* by himself or to have it remedied by third parties and to demand restitution from *mechatronic* for the necessary expenses occurred in connection there with. In any other case of intervention into or at the product by the *Customer* or third parties any warranty obligation of *mechatronic* expires. Costs which are incurred as a result of the subsequent performance of *mechatronic* shall – provided that the complaint proves these to be justified – be borne by *mechatronic* e.g. the costs of the replaced product, including the costs of shipment to the *Customer* and the appropriate installation and removal costs. In order to remedy any defects, the *Customer* must provide *mechatronic* with appropriate tools and hoists, fitters and staff assistance, in reasonable quantities and free of charge. *Mechatronic* grants for supplementary performance the same warranty as such for the delivered product, but limited to 6 month after the expiration of the original warranty period.

- 9.1.2. The *Customer* shall inspect incoming products immediately. Obvious defects at examining the

products shall be notified to *mechatronic* in writing immediately, other wise the products are considered to be accepted.

- 9.1.3. In the event of warranty performance on account of defect, *mechatronic* does not pay the necessary related costs, in particular transport costs, traveling expenses, labours costs and material costs, based on the fact, that the product has been moved to a different location than delivery was made.

- 9.1.4. Any warranty and or damage claims expire one year after the shipment to the *Customer*.

9.2. Defects of title

- 9.2.1. Should the use of the delivered product lead to an infringement of third-party property rights or copyrights than – save for the provisions of article nine – at *mechatronics* expense, *mechatronic* shall procure for the *Customer* the right to continue to use the products or shall modify the products in a manner acceptable to the *Customer* so that there is no longer any infringement of the third-party property right. If *mechatronic* is not able to achieve this on reasonable financial terms or within a reasonable period of time, the *Customer* is entitled to withdraw from the contract. Under the conditions set forth above *mechatronic* also has the right to withdraw from the contract. *Mechatronic* shall then keep the *Customer* harmless from any claims by a third party due to infringement of third party rights, if they are uncontested or have

been determined by final court judgement.

- 9.2.2. The above mentioned commitments in article 9.2.1 are final, but will only be effective if the infringement is not due to the fact that *Customer* modified the delivered products by himself without *mechatronics'* authorisation, or has used it in a manner which breaches the contract, the defect of title is not due to an instruction issued by the *Customer* and the *Customer* has informed *mechatronic* immediately of defects in title. The before mentioned obligations shall only apply as far as the *Customer* immediately contacts *mechatronic* about such claims by third parties and supports *mechatronic* and reserves *mechatronic* the right to litigate legal disputes in this matters.
- 9.2.3. Any other claims due to material defects or defects in title shall be excluded.

10. Compensation for damages

- 10.1. *Mechatronic* shall not be liable for damages including financial damages whatsoever, due to minor negligence. The *Customer* has the obligation to prove gross negligence or full intent.
- 10.2. If *mechatronic* shall be committed to pay damages, the amount of damages shall be limited to 30% of the contract value.
- 10.3. *Customer* damages claims expire one year after acceptance of the products.

11. Cancellation of a contract

- 11.1. Apart of the general regulations of law *mechatronic* is entitled to withdraw from a contract in case of delayed acceptance of offer (chapter 6) or other important reasons as for example initiation of bankruptcy proceedings of a contract party or dismissal of a bankruptcy petition for lack of cost or covering assets. In the event of withdrawal of a contract due to fault of the *Customer*, *mechatronic* has the option of asking for damages of 30 % of the contract value or the full compensation of suffered damages.
- 11.2. If the *Customer* is in default of payment, *mechatronic* is released from any other performance, duties and delivery obligations and entitled to withhold any outstanding deliveries or services as well as to demand payments in advance and / or deposits or to withdraw from the contract after setting a reasonable extended time limit.
- 11.3. The pre-condition for the *Customer* to withdraw from the agreement is a delay in supply caused by gross negligence on the part of *mechatronic* and only after a reasonable time period has been granted. Any such notice has to be in writing.
- 11.4. If the *Customer* withdraws from the contract without just cause, or demands its cancellation, *mechatronic* shall has the right to choose between insisting on performance of the contract and cancellation of the contract; in the later case the

Customer shall be obligated at *mechatronics'* discretion to either pay a fixed rate of damages of 30 % of the gross invoice amount or compensation for the loss actually occurred.

12. Reservation of title, release of securities

- 12.1. Upon full payment of the purchase price all delivered products remain the sole and unrestricted property of *mechatronic*. The *Customer* is informed and agrees to the reservation of title by signing the contract. In the event of delayed payment *mechatronic* is also entitled to collect the delivered products without the consent of the *Customer*.
- 12.2. The *Customer* shall treat the product subject to reservation of title with utmost care during the period of the reservation of title, shall mark these products as the property of *mechatronic*, in particular, he is obliged to insure it at its own expense against fire, water and theft, at replacement value.
- 12.3. All products delivered by *mechatronic* remain its property – also if the reserved products get mixed or combined with other products in an inseparable way – until the *Customer* has made all payments relating to the contract. *Mechatronic* becomes co-owner of the newly created product in relation of the value of the products delivered and processed at the time of the combination.

12.4. The *Customer* may neither pledge products that are subject to proprietary rights nor offer them as security. At any pledge or other demands by third parties, the *Customer* is obliged to claim *mechatronics* reservations of title and has to notify *mechatronic* immediately.

12.5. Without written consent, *Customer* is not entitled to sell the reserved products. The *Customer* assigns to *mechatronic* here and now, however, all claims which will exist for the *Customer* due to resale to its *Customers* or to third parties at the amount of the value of the reserved products. The agreed value of the reserved products is the final invoice amount including value added tax.

12.6. If the *Customer* is in default on payment, the reservation of title also includes the right to inspect or to collect the reserved products at any time after appropriate pre-notice. If the *Customer* changes the location of the reserved products, he is obliged to inform *mechatronic* immediately in writing about it.

13. Intellectual property

All intellectual property rights related in connection with the products, development, documentation, etc., such as inventions, know-how, etc. remain the exclusive property of *mechatronic*.

14. Secrecy

The *Customer* shall undertake to keep absolutely confidential with third parties regarding any knowledge obtained in the course of the business relationship with *mechatronic*.

15. Data protection

15.1. Personal data of *Customers* are only processed within the context of the legal provisions concerning data protection. The *Customer* agrees, that the data which are disclosed in connection with the order and the processing of the order will be collected, processed, stored and used for accounting purposes of *mechatronic* as well as used for our internal market research and marketing purposes. The data will be used by *mechatronic* for the fulfilment of statutory requirements, for the processing of payment transactions and for advertising purposes, but not based on the third parties.

15.2. Mechatronic is authorized to use the company logos of its *Customers* in presentations with *Customers*, investors, etc.

16. Applicable law, place of performance, jurisdiction

16.1. Austrian law shall exclusively be applicable excluding the regulations of the Austrian Private International Law and the Convention on Sales of International Products (UNCISG). INCOTERMS as valid on conclusion of the con-

tract shall apply in the interpretation of trade terms used in the contract.

16.2. The place of payment and performance for all obligations arising out of contracts with the *Customer* shall be Villach / Austria.

16.3. The competent court in Villach is considered to be agreed as the exclusive place for jurisdiction for all disputes arising indirectly or directly from any relationship between *Customer* and *mechatronic*.

The German Version of the AGB's shall take precedence over the English Version of the AGB's.