

# **GTC**

## **1.) Scope**

These General Terms and Conditions of Sale and Service apply to all offers, sales, deliveries, and services (installations, commissioning, repairs, support discussions, and training), unless otherwise agreed and confirmed in writing by DMH. The current version of the General Terms and Conditions is available via <https://www.dmh.at>. By accepting the offer and placing the order, the customer agrees to the General Terms and Conditions of DMH.

## **2.) Acceptance of the Terms and Conditions of Sale and Delivery**

By placing an order or accepting the delivery, the customer expressly accepts these conditions. Other conditions (e.g. the conditions of purchase of the customer) do not apply, even if they have not been expressly contradicted by DMH.

## **3.) Conclusion of the contract**

All offers from DMH are non-binding and subject to change. All contracts with our customers only come into effect once we provide written order confirmation. Ancillary agreements and alterations to the contract require our written confirmation. If the written order confirmation from DMH deviates from the customer's order and DMH points out this deviation in the confirmation, the deviations are considered to have been approved by the customer if the customer does not object to them within two days.

The order is binding for the customer for a period of 365 days as of the date it is received by DMH. During this period, the customer may only withdraw from or amend the order with the written consent of DMH.

DMH reserves the right, at its own discretion, to only accept or execute the customer orders in part if it is possible to divide the service. In this case, an order will be concluded to the extent that DMH accepted it, without any entitlement to claims on the part of the customer arising therefrom.

## **4.) Delivery and delivery times**

Our delivery times are non-binding, are provided without guarantee, and will be adhered to as far as possible. The delivery periods begin with the order confirmation and clarification of all delivery details. Unless otherwise agreed, the delivery time shall be deemed to have been met if the goods have left the factory premises or the customer has been notified of their readiness for dispatch by the agreed delivery time.

Our sales prices do not include costs for delivery, assembly, or installation. On request, however, these services will be organized or provided by DMH for a separate charge. Furthermore, DMH is only obliged to fulfill the service if the customer has fulfilled all their obligations necessary for execution of the order. DMH is entitled to exceed the agreed dates and delivery periods by up to one week.

Unforeseeable events, e.g. limited supply of raw, auxiliary, and operating materials, official measures, interruption of delivery routes, operational disruptions, or other cases of force majeure entitle DMH either to an extension of the delivery time or to withdraw from the contract without the customer being entitled to claims due to said withdrawal.

Claims for damages on the part of the customer due to delayed delivery or non-delivery are excluded.

## **5.) Shipping**

Unless the customer prescribes otherwise, DMH is free to select the shipping route, the means of transport, the current version of applicable Incoterms, and the type of packaging. The nature and quantity of the shipment and its packaging can only be objected to within eight days after receipt of the goods. If the complaint is recognized by DMH as justified, DMH is entitled to deliver a replacement or to issue a credit note.

Unless otherwise agreed, the transfer of risk from DMH to the customer takes place at the time of delivery to the customer. The customer is obliged to accept the delivered goods without delay, otherwise the delivery shall be deemed to have taken place on the day on which acceptance by the customer should have taken place in accordance with the contract; at this point in time, the risk of accidental loss and/or deterioration shall pass to the customer regardless. The same applies in the event of a breach of the duty to cooperate on the part of the customer and any consequences resulting from this. In any case of delayed acceptance, DMH has the right to store the goods at the expense of the customer, in which case the delivery shall be deemed to have been made. If the goods are stored at DMH, a storage fee of 5% of the gross invoice amount per calendar day is deemed to have been agreed; in the case of storage with a third party, the customer must reimburse the appropriate actual storage costs. This does not affect the agreed terms of payment. DMH also reserves the right to assert any further claims in all cases.

## **6.) Price**

The prices quoted by DMH in the published price lists and the offers submitted are non-binding and do not include ancillary costs, unless otherwise agreed. The prices and discounts valid on the day of the order confirmation will be invoiced.

The prices are net prices not including statutory value added tax, unless expressly stated otherwise. Price changes for deliveries that have not yet been invoiced can be made or cancelled in whole or in part at any time through collective agreement regulations in the industry, materials necessary for the provision of services, energy, transport, third-party work, financing, etc.

## **7.) Terms of payment**

Unless otherwise agreed, new customers will only be delivered to following payment in advance.

As a rule, payments are to be made in euros and including VAT. Unless otherwise agreed, all invoices are due for payment 14 days after the invoice date.

In the event of default of payment by the customer, we are entitled, at our discretion, to claim compensation for the damage actually incurred or annual default interest of 9.2% (§ 456 of the Austrian Commercial Code – UGB) above the base interest rate of the European Central Bank. In the event of default of payment by the customer, DMH is entitled to demand compound interest from the day of delivery of the goods / due date of payment.

In addition, in the event of default in payment, DMH is entitled to make all outstanding claims against the customer due with immediate effect and to refuse deliveries to the customer from this or another contractual relationship, to make them dependent on payment in advance / a security deposit from the customer, or to withdraw from the contract by setting a reasonable grace period.

If partial deliveries have been agreed and the customer is in default with the payment of a partial delivery, DMH may declare its withdrawal from the contract both with regard to the partial delivery concerned and with regard to all outstanding services, through the setting of a reasonable grace period.

In the event of a justified withdrawal from the contract by DMH, the customer is obliged to return the goods to DMH within 30 days at the customer's own risk and expense or, at the request of DMH, to make them available for collection.

The customer shall reimburse DMH for the dunning and collection costs incurred and necessary for the appropriate legal action (including any collection expenses).

Netting by the customer against claims by DMH is only permissible if their counterclaims have either been legally established or expressly acknowledged by DMH.

If delays occur in the provision of services, DMH is entitled to issue partial invoices for the services rendered so far and to make them due immediately.

## **8.) Withdrawal from the contract**

In the event of default of acceptance or other important reasons, such as, in particular, bankruptcy of the customer or rejection of bankruptcy due to lack of assets, as well as in the event of default of payment by the customer, DMH shall be entitled to withdraw from the contract, provided that it has not yet been entirely fulfilled by both parties. In the event of withdrawal, DMH has the choice, if the customer is at fault, to claim lump-sum damages of 15% of the gross invoice amount or compensation for the damage actually incurred. In the event of default of payment by the customer, we are released from all further service and delivery obligations and shall be entitled to withhold outstanding deliveries or services and to demand payments in advance or security deposits, or to withdraw from the contract after setting a reasonable grace period. If the customer withdraws from the contract or requests its cancellation – without being entitled to do so – we have the choice of

insisting on the fulfillment of the contract or agreeing to the cancellation of the contract; in the latter case, the customer is obliged, at our discretion, to pay lump-sum damages in the amount of 15% of the gross invoice amount or the actual damage incurred.

### **8.) Property rights**

DMH reserves the right of ownership and copyright to drafts, drawings, and other documents. They may only be made available to third parties with the express written consent of DMH.

Plans, sketches, or other technical documents, as well as samples, catalogs, brochures, illustrations, and similar items (including material samples in the form of granulates and/or semi-finished products and seal samples) always remain the intellectual property of DMH; the customer/interested party does not receive any rights of use or exploitation of any kind. Any use, in particular transfer, duplication, publication, and making available, including copying, even of extracts, requires the express written consent of DMH. All documents listed above can be reclaimed by DMH at any time. The contractual partner undertakes to maintain confidentiality vis-à-vis third parties with regard to the knowledge gained from the business relationship.

### **9.) Retention of ownership**

DMH reserves the right of ownership to all delivered goods until full payment of the purchase price including interest, costs, and ancillary fees. Sale, pawning, transfer by way of security, or other disposal of the goods subject to right of ownership is only permissible if DMH gives its written consent in advance. If a customer sells the goods delivered by DMH, the resulting claims, including all ancillary rights, shall be deemed assigned to DMH until DMH is fully satisfied with all claims arising from its deliveries to the customer. DMH hereby accepts this assignment. The customer undertakes to make a corresponding note in their books or invoices to demonstrably inform the third party about the assignment and to disclose the data of the third party in full to DMH. After the assignment, DMH is authorized to collect the claim and reserves the right to collect the claim itself if the customer does not meet their payment obligations or does not meet them completely.

When processing the goods subject to right of ownership, DMH acquires co-ownership of the new item in proportion to the value of the delivered goods. The same applies if the goods subject to right of ownership are mixed or processed with other items owned by third parties.

If the customer breaches these obligations, they must reimburse DMH for all costs and damages caused as a result.

### **10.) Warranty**

The goods must be inspected for defects by the customer immediately after delivery, otherwise the legal consequences mentioned in § 377 (2) UGB become valid. In case of defects, DMH must also be notified in writing immediately, at the latest within five days after delivery, stating the type and extent of the defect.

If notification of defects is not provided or is not provided in time, an assertion of warranty claims, claims for damages due to the defect itself, or cancellation of the contract due to error regarding the defect-free nature of the goods are excluded.

The customer bears the full burden of proof for all conditions for the claim, in particular for the defect itself, for the time of discovery of the defect, and for notification of the defect in good time. The reverse onus regulated in § 924 of the Austrian Civil Code (ABGB) is excluded.

DMH only provides warranty for self-manufactured goods and materials. If the goods are manufactured by DMH according to the technical specifications of the customer, DMH shall not be liable for the accuracy of the design. Any further warranty or obligation to provide a replacement for direct or indirect damage (e.g. costs for service calls) as a result of a manufacturing or material defect is excluded.

This warranty only covers defects that affect the functionality of the product. Purely optical differences do not justify any claim to warranty. What qualifies as a limitation of functionality is defined in our QPAs (Quality Performance Accreditation). The current version of these QPAs is available on our home page at <https://www.dmh.at>.

## **11.) Indemnity and product liability**

All claims for damages by the buyer against DMH, for whatever reason, in particular on the basis of non-performance, poor performance, delay, fault before or at the point of conclusion of the contract, from tort or any other legal reason, are excluded, unless the buyer proves that the damages are caused by intent or blatant gross negligence on the part of DMH. This does not apply to personal injury.

With the exception of personal injury, there is no liability for indirect damages and consequential damages or for loss of profit; in particular, there is no liability due to positive breach of contract by DMH.

Any liability on the part of DMH is limited to the simple net order value. This limitation also applies to claims to recourse pursuant to § 12 of the Austrian Product Liability Act (PHG).

Claims for damages shall come under the statute of limitations if they are not asserted in court within six months of becoming aware of the damage and the injuring party, or otherwise eight years after provision of the service or delivery.

The assertion of any claims to recourse against DMH in accordance with § 12 PHG is excluded, unless the person or entity entitled to recourse proves that the error was caused by DMH or at least through gross negligence.

The reverse onus pursuant to § 1298 S 2 ABGB is excluded.

In the event of non-compliance with any conditions for use or official approval conditions, any claim for damages or any other liability on the part of DMH is excluded.

## **12.) Place of performance and jurisdiction**

For all deliveries and payments, Leoben is the place of performance. The contractual relationship between DMH and the customer is to be governed by Austrian law, excluding the conflict-of-law provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods is expressly excluded. The place of jurisdiction shall be the competent court in Leoben.

## **13.) Data protection**

DMH processes personal data disclosed by the customer in the context of a business relationship. This personal data includes personal details (name, address, and other contact details, bank details, etc.). In addition, this may also include order data, data from the fulfillment of the contractual obligation, and other data comparable to the categories mentioned. Personal data will be processed by DMH in accordance with the provisions of the GDPR and the Austrian Data Protection Act to the extent necessary for the duration of the business relationship with the customer. Insofar as DMH is required to comply with statutory storage and documentation obligations, personal data will be stored for the period required by law for this purpose. The storage period is particularly based on the statutory limitation periods, which are in most cases 3 years, but in some cases up to 30 years. The customer need only disclose the personal data necessary for the establishment, execution, and termination of a contractual relationship or that DMH is legally obliged to collect. If this data is not disclosed by the customer, DMH will, in most cases, have to reject the conclusion of the contract or will no longer be able to process an existing contract and may therefore have to terminate it.

In accordance with the relevant data protection provisions and data protection guidelines, appropriate technical and organizational measures for adequate security in the processing of personal data are guaranteed. The parties undertake to maintain absolute confidentiality vis-à-vis third parties with regard to the knowledge gained from the business relationship. The declaration of consent regarding the processing of personal data of the customer can be withdrawn at any time by email to [verwaltung@dmh.at]. By means of an informal request, the customer can receive information at any time about the data relating to them that is stored and/or processed by sending an email to [verwaltung@dmh.at]. Rights of data subjects (request for correction of data, erasure of data, or restriction of data processing) can be asserted by means of an informal request via email to [verwaltung@dmh.at]. Requests will be processed within one month and the subject will be informed in writing of the measures taken after the process has been completed. If the request is not processed or is not processed properly, the customer has the option of making a complaint to the Austrian Data Protection Authority.

## **14.) Final provisions**

These terms and conditions apply to all orders by the customer, without the need for specific reference to them. Should any of these individual terms and conditions be invalid, void, or unenforceable, this shall not affect the binding nature of the remaining provisions and the legal transactions concluded on the basis of these conditions.