

**General Terms of Business**  
**Flowtec Industrietechnik GmbH**  
Version: July 2020

## 1. General - scope of application

- 1.1 The General Terms of Business (hereinafter referred to as "GTBs") of FLOWTEC Industrietechnik GmbH, FN 184624 g (hereinafter referred to as "FLOWTEC") in the version valid at the time of delivery of goods and services apply to all agreements concluded between FLOWTEC and the CUSTOMER.
- 1.2 With the transmission of an order or conclusion of a contract, the CUSTOMER expressly declares their agreement with these GTBs. These GTBs apply to all future business transactions, even without further express agreement.
- 1.3 Amendments and supplements to the GTBs as well as verbal agreements which deviate from the contents of these GTBs are only valid with the written consent of FLOWTEC. Any deviating or supplementary general terms of business or purchase of the CUSTOMER are not valid, even if they are included or referenced in orders of the CUSTOMER accepted by FLOWTEC.
- 1.4 In the event of any contradictions between the provisions of the agreement concluded with the CUSTOMER and these GTBs, the provisions of the agreement shall prevail.

## 2. Conclusion of contract

- 2.1 Our offers are non-binding, unless they have been expressly designated as binding in the offer text. The order by the CUSTOMER is considered a binding offer of contract, which we can accept within 2 weeks after receipt. The conclusion of a contract is only legally effective with a written order confirmation by FLOWTEC.
- 2.2 FLOWTEC is entitled to send order confirmations electronically to the CUSTOMER, unless the CUSTOMER objects to this procedure immediately after receipt of the order confirmation.

## 3. Scope and delivery

The scope of our goods deliveries and services (hereinafter referred to as the "contractual object") shall be exclusively determined by the order confirmation. Partial deliveries are permitted, provided that this is reasonable for the CUSTOMER and the CUSTOMER does not object to this procedure in writing immediately after partial delivery has been made.

## 4. Prices, costs and payments

- 4.1 All prices indicated are non-binding and are – unless otherwise stated – in euros and exclude VAT. Packaging and transport costs, freight and insurance charges, customs duties, fees and levies are to be borne by the CUSTOMER.
- 4.2 Statutory value-added tax is not included in our prices; it is additionally shown separately on the invoice at the rate applicable on the day of invoicing.
- 4.3 The prices quoted are "ex works (EXW)", according to INCOTERMS 2010, excluding packaging. Any deviating delivery agreements are permissible and shall be agreed in writing with the CUSTOMER at the time of conclusion of the contract.
- 4.4 The prices correspond to the cost situation at the time the contract is concluded. Should cost changes occur until the day of delivery/service provision, FLOWTEC reserves the right to adjust prices, provided that the delivery/service is provided later than 20 weeks after conclusion of the contract. This right of price adjustment does not apply if FLOWTEC is responsible for a delay in delivery.
- 4.5 Invoices from FLOWTEC are, unless otherwise expressly agreed in writing, due immediately after invoicing without deductions or discounts. Bank transfers are only considered as payment after receipt of payment on our account; any bank charges are to be borne exclusively by the CUSTOMER.
- 4.6 Discount agreements must in any case be stated in the written order confirmation and are only valid under the condition of timely and complete payment of all claims of FLOWTEC against the CUSTOMER.
- 4.7 In the event of late payment, interest on arrears will be charged at the statutory rate from the due date of the claim. The CUSTOMER undertakes to reimburse any reminder and collection charges in the event

of default of payment, insofar as these are necessary for appropriate legal prosecution. The assertion of further (legal) claims remains unaffected. In case of delay of (partial) payment, FLOWTEC is entitled to make open but not yet due invoice amounts immediately due and/or to demand advance payment or security. If the CUSTOMER does not comply with our request for advance payment or provision of security within the period set by FLOWTEC, we are entitled to withdraw from the contract and to charge the CUSTOMER for the costs incurred up to that point.

- 4.8 The offsetting against counterclaims of the CUSTOMER which are disputed by FLOWTEC and not legally established is not permitted. Similarly, the exercise of a right of retention by the CUSTOMER is excluded in the absence of a legally binding title or express written consent from FLOWTEC.
- 4.9 All agreed discounts on the prices stated in the contract, all agreed rebates of any kind whatsoever, are void without substitution, if the CUSTOMER is in default of all or part of their payment and acceptance obligations towards FLOWTEC.

## 5. Delivery time

- 5.1 The start of the delivery time stated by FLOWTEC in the order confirmation is subject to the timely and proper fulfilment of all obligations of the CUSTOMER, which are necessary for delivery. This includes in particular the clarification of all technical questions, the provision of any documents to be procured, approvals by the CUSTOMER and the receipt of any agreed advance payment by the CUSTOMER. Delivery times and dates will be met by FLOWTEC to the best of its ability, however, unless otherwise expressly agreed in writing, they are non-binding and are to be regarded as guideline values.
- 5.2 The delivery time shall be deemed to have been observed if the contractual object has left our warehouse or, in the case of direct deliveries, the factory of our contractual partner or readiness for dispatch has been notified before the expiry of the delivery time. Subsequent changes or additions to the order may extend the delivery time appropriately.
- 5.3 In cases of force majeure, labour disputes such as strikes, delays on the part of suppliers, other unforeseen events beyond our control as well as delayed delivery of essential raw materials and supplies for which we are not responsible, the delivery time shall be extended by the duration of the hindrance. FLOWTEC will immediately inform the CUSTOMER of the delay and duration if one of these events occurs. Claims for compensation by the CUSTOMER are excluded in all cases of delayed delivery or non-delivery, even after a grace period has been set, except in cases of intent or gross negligence.
- 5.4 If a delivery is not possible due to delivery difficulties and/or price increases at the sub-supplier or producer, FLOWTEC is entitled to withdraw from the contract without any obligation to pay compensation.
- 5.5 In case of deliveries where dispatch is delayed by the CUSTOMER, the costs incurred for storage in the warehouse of FLOWTEC or one of our suppliers, but at least 0.5% of the order value, will be charged for each month started, beginning one month after notification of readiness for dispatch. At the same time, FLOWTEC is entitled either to insist on fulfilment of the contract or, after setting a reasonable grace period, to withdraw from the contract and to dispose freely of the stored goods.

## 6. Transfer of risk and acceptance

- 6.1 Delivery is "ex works (EXW)", in accordance with INCOTERMS 2010, unless other delivery terms have been agreed in the order confirmation.
- 6.2 The risk of accidental loss and accidental deterioration of the contractual object is transferred to the CUSTOMER as soon as the contractual object is handed over to the carrier, in case of default of acceptance by the CUSTOMER from readiness for shipment. This also applies if partial deliveries are made or FLOWTEC has assumed other services. Provisions deviating from this can be agreed

in writing in the contract concluded with the CUSTOMER.

- 6.3 At the request of the CUSTOMER, FLOWTEC will cover the delivery by means of transport insurance; the costs incurred will be borne by the CUSTOMER.

## 7. Withdrawal from the contract

- 7.1 Unless expressly agreed otherwise in writing, the CUSTOMER may withdraw from the contract if the delivery of the contractual object is delayed due to gross fault on the part of FLOWTEC and the reasonable grace period set by the CUSTOMER has expired without result. Withdrawal must be asserted by registered letter. The CUSTOMER will be invoiced accordingly for deliveries, services and preparatory actions already performed.
- 7.2 Irrespective of its other rights, FLOWTEC is entitled to withdraw from the contract or parts of the contract without liability towards the CUSTOMER, a) if the delivery of the contractual object or the provision of services becomes impossible or delayed despite the setting of a reasonable grace period for reasons for which the CUSTOMER is responsible, b) if doubts arise regarding the ability of the CUSTOMER to pay and if the CUSTOMER, at the request of FLOWTEC, does not make an advance payment or provide suitable security before delivery, c) if the CUSTOMER is or becomes insolvent or bankrupt, or d) if the extension of the delivery time due to the reasons mentioned in point 5.3 is more than six months.
- 7.3 Other consequences of withdrawal are excluded.

## 8. Reservation of title

- 8.1 The delivered contractual object (hereinafter also referred to as the "reserved good") remains the property of FLOWTEC until all claims arising from the contract, including interest, discounts withheld without justification by the CUSTOMER or deductions not recognised by FLOWTEC, costs incurred and the like, for whatever legal reason, have been settled.
- 8.2 As long as a reservation of title exists and not all claims have been settled in full, the CUSTOMER undertakes to treat the reserved goods with care, to insure them appropriately and to comply with due diligence. Special storage regulations for the reserved goods must be observed and complied with.
- 8.3 The pledging or transfer by way of security of reserved goods before full payment is excluded. Should the reserved goods be pledged or confiscated or otherwise accessed by third parties, the CUSTOMER must disclose the ownership of FLOWTEC, inform FLOWTEC immediately and send FLOWTEC all information and documents necessary to enforce the right of ownership.
- 8.4 The CUSTOMER hereby assigns to FLOWTEC their claims from the resale of the reserved goods with all ancillary rights, as well as those claims of the CUSTOMER with respect to reserved goods, which arise for any other legal reason against his customers or third parties (in particular claims in tort and claims for insurance benefits), including all balance claims from the current account in the amount of the claims and receivables to which FLOWTEC is entitled. FLOWTEC accepts the assignment.
- 8.5 If the ownership of FLOWTEC expires through combination with another item, FLOWTEC acquires co-ownership of the new item in the ratio of the value of the combined reserved goods (final invoice amount including VAT) to the other combined items at the time of combination. If the reserved goods are combined in such a way that the item of the CUSTOMER is to be regarded as the main item, FLOWTEC and the CUSTOMER hereby agree that the CUSTOMER transfers proportional co-ownership of this item to FLOWTEC. FLOWTEC accepts this transfer. Any costs incurred by FLOWTEC in connection with the enforcement of its claims as co-owner will be borne by the CUSTOMER.
- 8.6 If FLOWTEC has to make use of its reservation of title and the reserved goods are taken back, a credit note for the contractual object will be issued, taking into account storage time, wear and tear and other price reductions, but at least 30% of the invoice value.
- 8.7 The CUSTOMER undertakes to notify us before filing for insolvency proceedings so that we can take over reserved goods which are our property.

## 9. Warranty

- 9.1 The legal warranty according to Sections 922 et seq. of the Austrian General Civil Code (*Allgemein Bürgerliches Gesetzbuch, ABGB*) regulates legal consequences and claims to which the CUSTOMER is entitled within the framework of a sales contract in the event that FLOWTEC has delivered the contractual object in a defective condition. Decisive for determining the condition of the contractual object is the time of transfer of risk.
- 9.2 Defects must be notified in writing immediately after receipt of the delivery and service at the place of destination, hidden defects immediately after discovery of the defect. In any case, obvious defects must be notified in writing within 10 working days of delivery and, in the case of hidden defects, within the same period of time after their discovery. The complaint must be sufficiently substantiated and supported by evidence. If the CUSTOMER fails to carry out the proper inspection and/or notification of defects, liability for the defect not notified or not notified in time or not properly shall be deemed excluded in accordance with the statutory provisions.
- 9.3 The warranty period is a maximum of 24 months after handover of the contractual object, whereby the CUSTOMER must prove that the defect already existed at the time of handover or completion. Section 924 ABGB and Section 933 b ABGB are not applicable.
- 9.4 Minor technical changes and deviations from drawings and catalogues shall be deemed to have been approved in advance.
- 9.5 In the case of justified defects, the warranty is limited to improvement, supplementation of the missing parts or replacement by new delivery. Several rectifications and replacements are expressly permitted. In the case of rectification of defects by FLOWTEC, the warranty period for the repaired or replaced parts will not be restarted, but will remain within the scope of the remaining duration of the original warranty period at that time.
- 9.6 If repair or replacement is impossible or involves disproportionately high costs for FLOWTEC, or if FLOWTEC is unable to meet the replacement or improvement request or cannot meet it within a reasonable period of time, the CUSTOMER is entitled to demand a price reduction or rescission (complete cancellation of the contract). The warranty expires if the CUSTOMER or a third party not authorised by FLOWTEC has made changes or repairs to the contractual object which is the subject of the complaint. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case FLOWTEC must be informed immediately, does the CUSTOMER have the right – provided FLOWTEC gives its consent – to remedy the defect themselves or to have it remedied by a third party and to demand reimbursement of the necessary costs.
- 9.7 Expenses, in particular transport, travel, labour and material costs, which are directly related to the elimination of justified defects, will be borne by FLOWTEC. Costs arising from the rectification of unjustified defects (in particular costs for testing and transport) can be claimed by FLOWTEC, if this should have been apparent to the CUSTOMER.
- 9.8 FLOWTEC does not assume any warranty for damages caused by natural wear and tear, incorrect installation or removal, unsuitable or improper use, incorrect or negligent handling or storage.

## 10. Manufacturer warranty

If a manufacturer has given a voluntary assurance that the contractual object will function properly for a certain period of time (manufacturer's guarantee), the manufacturer's guarantees in this respect shall apply. The conditions and limitations of the respective manufacturer's warranties can be found in the respective warranty provisions.

## 11. Limitations of liability

- 11.1 FLOWTEC is only liable for damages outside the scope of the Austrian Product Liability Act (*Produkthaftungsgesetz*), if FLOWTEC can be proven to have acted with intent or gross negligence, within the framework of the legal regulations. Liability for slight negligence is excluded.
- 11.2 All claims as well as liability for damage or loss resulting from the later use or misuse of the contractual object by the CUSTOMER

(or a third party), in particular due to a) normal wear and tear b) abnormal working or operating conditions beyond the product or material specifications, c) negligent or intentional action of the CUSTOMER (or the end user) or the non-observance of the "Installation, Operation & Maintenance Manual" are excluded.

11.3 The liability of FLOWTEC for any claim, whether in contract, tort, law, indemnity or otherwise, arising out of or in connection with an order is limited to the value of the order in question. Claims exceeding this amount are expressly excluded.

11.4 In no event shall FLOWTEC be liable to the CUSTOMER for a) indirect, special, pecuniary, consequential, incidental damages and losses or punitive damages, or b) loss of other equipment or property, or c) economic loss or damage (such as, in particular, loss of production and business interruption), or d) loss or damage of any kind suffered by third parties, in each case including incidental and punitive damages, or e) loss of actual or anticipated profits, interest, revenue, anticipated savings or business, or damage to goodwill arising in connection with or arising out of any purchase order.

11.5 Subject to the foregoing paragraphs of this Section 11 and the limitations of liability set out therein, all claims arising out of or in connection with an order shall, to the extent legally possible, be settled in accordance with the parties' respective liability insurance policies.

## 12. Force Majeur

Force majeure or other unforeseen impairments in the sphere of FLOWTEC release FLOWTEC from the obligation to comply with the agreed obligations. Force majeure includes, in particular, operational and traffic disruptions, improper performance of services by subcontractors, transport interruptions or cessation of production; for the duration of the aforementioned impairment, FLOWTEC is released from the obligation to provide services, without the CUSTOMER being entitled to claim a price reduction or other damages.

## 13. Export

The CUSTOMER shall not enter into or carry out any business transactions in relation to the contractual object purchased from us which are prohibited under the relevant provisions, in particular under foreign trade law, including US export control law. If the CUSTOMER is not sure that such a prohibition does not exist, the CUSTOMER shall seek agreement with us in writing.

## 14. Compliance

The CUSTOMER undertakes to comply with all applicable laws, statutes, regulations and other legal provisions, in particular with regard to health, safety and the environment as well as against corruption and bribery. Further details and regulations on this subject can be found in the "Code of Conduct for Business Partners of Indutrade Group" in the currently valid version, available at [www.indutrade.com](http://www.indutrade.com).

## 15. Data protection

It is expressly pointed out that for the fulfilment of the contract, related data of the CUSTOMER (in particular names, addresses, telephone and fax numbers, email addresses, order, delivery and invoice addresses, order date, ordered or delivered products or services, quantity, price, delivery dates and payment terms etc.) may be stored by FLOWTEC in its EDP system for the purpose of automated support, as far as this is necessary for business purposes and is permitted by law. Customer data will not be passed on to third parties, except in cases where this is necessary to fulfil the agreed service. The CUSTOMER expressly declares their consent to this.

## 16. Applicable law, place of jurisdiction and performance, other provisions

16.1 All contracts concluded under these GTBs are subject to Austrian substantive law to the exclusion of the conflict of law rules of international private law. The application of the UNCITRAL Convention of the United Nations on Contracts for the International Sale of Goods is excluded.

16.2 It is agreed that the exclusive local jurisdiction of the competent court for Graz shall apply.

16.3 Unless otherwise stated in the order confirmation, the place of performance is Graz-Stattegg.

16.4 Should provisions of these GTBs be or become legally ineffective, invalid and/or void in the course of their term, this shall not affect the legal effectiveness and validity of the remaining provisions. In this case, the legally ineffective, invalid and/or void provision (or provision which has become legally ineffective, invalid and/or void) shall be replaced by a provision which is legally effective and valid and which corresponds in its economic effect to the replaced provision – as far as possible and legally permissible.