



**MATTRO**  
any way electric

# General Terms and Conditions

## GTC

Version: 1.0, dated 01.01.2021

All previous GTCs are hereby rendered invalid.





## **HAWE Mattro GmbH**

**Pocherweg 24, 6130 Schwaz AT**

### **General Terms and Conditions ("GTC")**

#### **1. Area of Validity**

- 1.1 The area of validity of these General Terms and Conditions (below: "GTC") extends to all deliveries and performances by Mattro GmbH (below: "Mattro") to contractual partners (below: "customer"). Should no specific provision be made below, these GTCs apply equally to business entities and consumers (jointly: customers).
- 1.2 The version of the Mattro GTCs valid on conclusion of contract, which can be retrieved on Mattro's website and which has also been transferred to the customer, applies in each case.
- 1.3 Mattro shall contract only on the basis of its GTCs. Business conditions of the customer or deviations or supplements to these GTCs are valid only when this is expressly confirmed by Mattro in writing. Activities by Mattro relating to fulfilment of contract do not in any case constitute agreement with the contractual conditions that deviate from these GTCs.
- 1.4 Business conditions of the customer shall also not be recognised when Mattro does not expressly contradict them following their receipt by Mattro.
- 1.5 Activities on our part relating to fulfilment of contract do not constitute agreement with the contractual conditions that deviate our conditions.
- 1.6 The customer agrees that in the case of use of the GTCs by them, in cases of doubt, our conditions should be used as a default, even if the conditions of the contractual partner remain uncontested.
- 1.7 Should deliveries and/or performances for consumers be conducted/provided, these GTCs apply to the extent that they do not contradict the provisions set out in the first main section of this law.

#### **2. Offer**

- 2.1 Offers submitted by Mattro are non-binding.
- 2.2 Cost estimates are produced without guarantee and are subject to a fee. Consumers shall be informed of this obligation to pay a fee prior to production of the cost estimate. Should an order be placed with all the performances included in the cost estimate, no separate fee shall be charged.
- 2.3 Acceptances, assurances and guarantees on our part or agreements that deviate from these GTCs in connection with the conclusion of contract do not become binding until we have issued a written confirmation.
- 2.4 Information in catalogues, brochures, presentations etc. is only decisive when express reference to this information is made in the order confirmation.



- 2.5 Offer and project documents may not be duplicated or made accessible to third parties without the agreement of Mattro. They remain the property of Mattro and must be returned at any time on request.

### **3. Conclusion of Contract**

- 3.1 A binding contract between Mattro and the customer does not exist until Mattro has issued an order confirmation in writing, or until the actual delivery or performance has been provided by Mattro to the customer.
- 3.2 Subsequent changes and supplements to a contract concluded between Mattro and the customer are only valid when made in writing.

### **4. Prices**

- 4.1 Information relating to prices does not include the respective valid statutory VAT, and are ex-warehouse ("free carrier Schwaz – FCA Schwaz"). Packaging, transportation, loading and shipment costs, and customs and insurance costs, shall be borne by the customer. These costs shall only be offset for consumers as customers when this has been negotiated in an individual contract.
- 4.2 Should an order made by the customer deviate from the offer, Mattro retains the right to make alterations to the price.
- 4.3 Prices communicated by Mattro are in each case based on the material and wage costs at the point in time at which the offer was written. Should these costs change between the time at which the offer was written and the time of delivery, Mattro retains the right to make alterations to the price in accordance with this change.
- 4.4 The customer is responsible for disposing of waste materials in the correct, environmentally friendly manner. Should we be separately tasked with disposal, this disposal must be remunerated as an additional payment by the customer at the agreed level, unless a remuneration agreement has been reached.

### **5. Delivery**

- 5.1 The run-up to the delivery or performance deadlines agreed with the customer begins with the date of the confirmation of order, although never prior to the fulfilment of all preliminary performances to be provided by the customer.
- 5.2 Should official and/or other approvals be required for the delivery or performance in the country in which the customer is based, the agreed deadlines are extended until such approvals have been furnished. The customer is responsible for obtaining these approvals.
- 5.3 The obligations and deadlines arising from a contract for Mattro generally cease to apply as long as the customer is in arrears with regard to an obligation to Mattro and/or a preliminary performance to be provided by the customer.
- 5.4 Mattro retains the right to make partial or preliminary deliveries and to offset these.
- 5.5 Agreed delivery or performance deadlines are subject to the absence of unforeseeable obstacles or obstacles for which the parties are not responsible, such as war, elementary



events, state or official interventions and prohibitions, shortfalls in energy or raw materials, strikes, transport damage or delays, pandemics, etc. Such obstacles authorise Mattro to extend the delivery or performance deadlines accordingly without claims of any nature arising on the part of the customer against Mattro. This also applies when these obstacles impact suppliers of Mattro.

- 5.6 Should the dispatch of goods that are ready for shipment be impossible for reasons for which Mattro is not responsible/for reasons for which the customer who is the consumer is responsible, or if the dispatch of goods ready for shipment is not required by the customer, Mattro is authorised to store the goods at the cost and risk to the customer.
- 5.7 Should Mattro be in arrears with a delivery or performance with respect to the customer, the customer shall only be due compensation for these arrears (penalty) if a separate agreement has expressly been reached. This also applies in cases when Mattro is culpable for the arrears. The customer does not retain the right to make claims (of whatever nature) beyond this agreed compensation (penalty), regardless of any culpability on the part of Mattro. If no separate agreement has been reached regarding a compensation (penalty), the business entity does not retain the right to assert claims (of whatever nature) against Mattro for arrears.

## **6. Fulfilment and Transfer of Risk**

- 6.1 Unless any deviating agreement has been made between the parties, the costs and risk are passed from Mattro to the business entity on transfer of the goods to the carrier in Schwaz. This also applies when assembly work is to be conducted at the site of the business entity. Should Mattro undertake the transportation, the costs and risk pass to the business entity on dispatch ex works or ex warehouse in Schwaz. For customers who are consumers, the risk is not passed to the consumer until the goods are dispatched to the consumer or to a third party determined by the consumer who differs from the carrier. However, if the consumer has themselves concluded the transport agreement without using the selection option recommended by Mattro, the risk already passes to the consumer when the goods are handed to the carrier.
- 6.2 The run-up to all deadlines relating to the fulfilment by Mattro begins with the above-named points in time. This also applies when the delivered goods and/or performances provided are subject to quality checks or test runs.

## **7. Payment**

- 7.1 Unless no deviating agreement is reached between Mattro and the customer, 50% of the agreed remuneration is due for payment on receipt of the order confirmation, and the remaining 50% of the agreed remuneration is due one week prior to the planned delivery date.
- 7.2 In the case of partial settlements, the corresponding partial payments are due on receipt of the invoice by the customer. This also applies to payments due for payment by the customer for subsequent deliveries or for performances that go beyond the original order.



- 7.3 All payments must be made by the customer in the agreed currency, without any deductions by the payment institution of Mattro. Mattro is not obliged to accept cheques or bills of exchange. This notwithstanding, cheques or bills of exchange are accepted solely on account of payment, and the customer must bear all expenses incurred as a result.
- 7.4 The business entity is not authorised to retain or offset payments due to guarantee claims, damage compensation claims or other claims and/or objections submitted, whatever their legal basis.
- 7.5 Should the customer be in default of payment, Mattro retains the right, regardless of any other valid claims (such as reminder and debt collection costs, and the costs of any legal advice and representation), in particular:
- a) to postpone the fulfilment of its own obligations until the due payments have been made (whereby in this case, all additional costs arising from the postponement of fulfilment must be borne by the customer)
  - b) to declare all payments that have not yet been made due (immediate maturity)
  - c) to charge default interest at the level specified in § 456 of the Austrian Enterprise Code (UGB)
  - d) to revoke all agreed rebates, discounts and other benefits
  - e) on failure to pay despite the granting of a reasonable deadline extension, to withdraw from the contract and - irrespective of the assertion of any further damage claims - to charge a lump sum damage compensation fee (cancellation fee) totalling 15% of the contractual sum.
- 7.6 For the purpose of clarification, it is recorded that payments by the customer of Mattro shall first offset claims arising from works and service performances (in particular repairs and assembly work), then demands for replacement parts, then interest and ancillary fees, then claims arising from the delivery of goods that are not subject to reservation of ownership, and finally from claims arising from the delivery of goods that are subject to reservation of ownership.

## **8. Credit Assessment**

The customer expressly consents to their data being transferred to the state authorised creditor protection associations, the Alpenländischer Kreditorenverband (AKV), the Österreichischer Verband Creditreform (ÖVC), the Insolvenzschutzverband für Arbeitnehmer oder Arbeitnehmerinnen (ISA) and the Kreditschutzverband von 1870 (KSV), solely for the purpose of creditor protection.

## **9. Reservation of Ownership**

- 9.1 Mattro retains the right to reserve ownership of the object of purchase until the fulfilment of all financial obligations on the part of the customer. The customer is obliged to meet all formal requirements necessary for the reservation of ownership by Mattro. Furthermore, they must keep the object of purchase subject to reservation of ownership in an orderly



condition, and to immediately arrange for any necessary repairs at the Mattro workshops or at other workshops approved by Mattro.

- 9.2 All further sale, pledging, mortgaging of property, lease and/or other transfer of the object of purchase subject to reservation of ownership by the customer is permissible only following written approval by Mattro. Should our approval be given, the purchase price claim of the business entity is regarded as already having been ceded to us.
- 9.3 Should the object of purchase owned by Mattro be affected by seizure measures or any other measures the place the right to ownership of Mattro at risk, the customer is obliged to immediately provide notification the right to ownership of Mattro, and furthermore, to conduct the necessary measures to secure the property of Mattro at their own cost. This notwithstanding, the customer must inform Mattro immediately.
- 9.4 Should the object of purchase that is subject to reservation of ownership be sold by the customer, the reserved right to ownership of Mattro extends to the future revenue or purchase price claim arising from this transaction. Should such onward sale take place, the customer is obliged to report this immediately and to store the revenue separately.
- 9.5 Should the object of purchase delivered by Mattro be altered or processed and/or connected or mixed with other items, Mattro is due the aliquot portion of the co-ownership arising.

## **10. Repair Orders**

Should it be determined beyond the statutory guarantee obligation that additional replacement parts are required for repairs in relation to a repair order issued by the customer, these replacement parts must be paid for by the customer, even if no additional order has been placed. Should the customer request a temporary or incomplete repair, Mattro assumes no liability of any nature for the result of the repair or the correct functioning of the object to be repaired. The same applies when during the course of a repair, used or new parts are supplied by the customer themselves. For batteries supplied by Mattro, it is here recorded as clarification that capacity losses that are standard according to the latest technical developments, or which are caused by incorrect use, do not qualify as faults.

## **11. Rental Contracts**

- 11.1 The rental object and the rental period are based on the agreement reached between Mattro and the customer. The failure to collect the rental object or the premature return of the rental object do not change the agreed rental period in any way. Should the rental period be exceeded, the contractually agreed rental interest must be paid aliquot for the additional time period. Further claims for damage compensation by Mattro remain unaffected.
- 11.2 When the rental object is collected, a deposit must be paid, which is repaid to the customer following return of the rental object in the condition stipulated in the contract, and following deduction of the unpaid rental interest.



- 11.3 The customer must without exception observe the technical regulations and operating instructions, as well as instructions issued by Mattro when using the rental object, and to treat the rental object with care. Without exception, the customer may not make any changes to the rental object.
- 11.4 Unless any other agreement is reached, only the customer is authorised to use the rental object, and they may not transfer the rental object to third parties for any purpose. Should the customer wish to transfer the rental object to third parties for use, this must expressly be agreed on conclusion of the rental contract between Mattro and the customer. In every case of transfer of the rental object to third parties, the customer is liable for the adherence to the provisions set out in the agreement reached with Mattro by the customer, in particular with regard to the orderly and careful use of the rental object and the necessary instructions to the third party as to how to safely use the rental object. The customer is liable for the behaviour of third parties in the same way as for their own behaviour.
- 11.5 Should damage occur to the rental object, Mattro must be informed by the customer immediately. The customer must compensate for all damage arising to the rental object during the rental period. This applies in particular to damage for which the customer and/or third parties (regardless of whether the rental object was transferred to the third parties with or without authorisation) are responsible. Regardless of any additional claims to which Mattro retains the right, if damage occurs, the customer is in particular liable for repair costs, recovery and return transport costs, damage assessor costs, technical and commercial value reduction, the operation interruption damages arising at Mattro, and other ancillary costs related to the repair of the damage. Furthermore, the customer is also liable for the loss of the rental object through theft or accidental loss.

## **12. Warranty**

- 12.1 Unless any other deviating agreement is reached with business entities, the warranty period is six months following transfer of risk, as defined in item 6.1. This also applies to delivery and performance items that are firmly connected with a building or with land. Mattro offers no warranty when used goods are sold and when repair orders are accepted, or in cases of alterations or retrofitting. There is also no guarantee claim for expendable parts.
- 12.2 Business entities are obliged to immediately accept delivered goods or performances, to examine them and to report any objections with regard to quantity and quality in writing to Mattro within 8 days, and shall waive any rights with respect to these objections. Any hidden faults must be reported to Mattro immediately they are detected; otherwise, all claims by the business entity are also rendered invalid. The guarantee claim of the business entity is limited at the discretion of Mattro to the subsequent improvement or replacement of the defective goods, or to the parts of the goods affected by the fault. Parts replaced by Mattro within the scope of the guarantee are transferred to the ownership of Mattro. All other costs and expenses (in particular for packaging, loading and transport) which arise in connection with the faults arising and/or their rectification shall be borne by the business entity.



- 12.3 The presence of a fault at the point of time of transfer must be proven by the business entity. The presumption rule as defined in § 924 of the Austrian Civil Code (ABGB) is waived with respect to business entities.
- 12.4 Faults and/or defects arising as a result of incorrect use or use not authorised in the contract are expressly excluded from guarantee claims to which the customer retains the right. This applies in particular when the customer fails to observe operating instructions or other information provided by Mattro relating to the use of the purchase object, or when the customer fails to arrange for the specified technical inspections (e.g. obligatory service) in an orderly and timely manner. For goods or parts of goods that are produced solely or mainly on the basis of requirements or other specifications issued by the customer, the guarantee only extends to the contractual execution.
- 12.5 The guarantee lapses when the customer makes changes or conducts servicing work on the purchase object, either themselves or via third parties, without the approval of Mattro. Invoices for performances provided in this context shall not be recognised.
- 12.6 For customers who are consumers, the statutory guarantee provisions apply.

### **13. Liability**

- 13.1 Regardless of the liability exclusions stipulated in § 8 of the Product Liability Act (below: "PHG"), liability of Mattro according to the PHG is excluded when instructions or warning and safety information (particularly in operating instructions) are not observed. In the absence of mandatory legal provisions to the contrary, any recourse claims against Mattro that may be asserted by the customer or by third parties with respect to product liability as defined in the PHG are expressly excluded, unless the recourse claimant provides evidence that the fault has been caused within the realm of responsibility of Mattro, and that it has arisen at least as a result of gross negligence.
- 13.2 Beyond the area of validity of the PHG, claims for damage compensation, with the exception of damage to persons, may only be asserted in cases of intentional or grossly negligent behaviour by Mattro, and also only for damage caused directly by the product. The assertion of any other claims against Mattro, in particular consequential loss or lost profits, are expressly excluded. The business entity is responsible for providing evidence in the case of culpability on the part of Mattro. Independently of this, claims for damage compensation expire in all cases two years following delivery or provision of the service.
- 13.3 In cases of liability insurance, the liability of Mattro with respect to business entities is limited to the insurance amount available for the specific damage case. This liability limitation comprises all claims against Mattro, in particular those arising from damage compensation and price reduction. If in the case of an insurance event there are several competing customers who have been damaged, the coverage available from the insurance amount for each individual damaged customer is reduced in accordance with the proportion of the claims asserted by the customers.
- 13.4 Mattro assumes no liability for any interventions in commercial protection rights (in particular, patented and registered designs) of third parties.



13.5 In the absence of any mandatory legal provisions to the contrary, in the case of sale or sub-sale of the goods purchased from Mattro to the USA and/or Canada, the customer, as the selling party, assumes all liability for any claims arising for damage compensation and product liability. The customer as the selling party therefore must fully indemnify Mattro and hold Mattro harmless as the supplier should claims be asserted by third parties in these areas. Further, the customer as the selling party to the maximum permissible degree as permitted in law) shall refrain from asserting claims against Mattro themselves (including claims for recourse). In this case, the customer is also responsible for providing evidence in the case of (gross) culpability on the part of Mattro.

13.6 The customer is obliged to transfer all liability limitations as specified in the above points 13.1 to 13.5 to any purchasers.

#### **14. Withdrawal from the Contract**

14.1 The customer is authorised to withdraw from the contract when despite a written extension of the deadline by the customer, Mattro is in arrears with the provision of the performance by more than six weeks.

14.2 Regardless of any other due claims, Mattro is authorised to withdraw from the contract, in particular:

a) when the customer is in arrears of payment as specified in point 7.5 e)

b) when the delivery or performance becomes impossible for reasons for which the customer is responsible, or is delayed beyond a reasonable extended period, or

c) when the creditworthiness of the customer has significantly worsened following conclusion of contract, and the customer is unwilling either to make a prepayment nor to provide adequate security in the form of an abstract bank guarantee by an Austrian bank at the level of the agreed fee.

As clarification, it is recorded that withdrawal for the above reasons can also be explained by an incomplete portion of the delivery or performance.

14.3 Should the originally agreed delivery period be extended by more than half, although at least by six weeks, due to one of the obstacles listed in 5.5, Mattro is authorised to withdraw with respect to the still incomplete portion of the delivery or performance.

14.4 If bankruptcy and/or administration proceedings are opened with regard to the assets of a contractual party, or if bankruptcy proceedings are only not opened due to a lack of cost-covering assets, the other contractual party may declare their withdrawal from the contract with immediate effect.

14.5 Should the customer withdraw from the contract for reasons other than those listed in 14.1, Mattro - regardless of other claims resulting from the withdrawal - is in all cases authorised to issue an invoice for performances or partial performances that have already been provided. This also applies when the delivery or performance has not yet been accepted or approved by the customer, and to preparatory work conducted by Mattro. Alternatively, Mattro retains the right to demand the return of items already delivered.



- 14.6 The customer is authorised to withdraw from the contract following express approval by Mattro and against payment of a cancellation fee of at least 15% of the contractual amount. In such cases, point 14.5 above applies to performances or partial performances already provided by Mattro at the point in time of withdrawal, for deliveries or performances that have not yet been accepted or approved by the customer, and for preparatory work already completed.

## **15. Commercial Protection Rights and Copyright**

- 15.1 Should Mattro produce goods partially or entirely on the basis of structural information, drawings, models or other specifications issued by the customer, the customer must indemnify Mattro in full and hold Mattro fully harmless should protection rights of third parties be infringed.
- 15.2 All execution documents, such as plans, sketches, technical descriptions, etc., and samples, catalogues, brochures, images, etc. remain the intellectual property of Mattro at all times, and are subject to the relevant statutory restrictions with regard to duplication, imitation, competition, etc. Point 2.3 also applies to execution documents.
- 15.3 In the case of development orders, Mattro retains the right to ownership of the intellectual property ("IP") arising as a result of the order until full fulfilment of all contractual obligations on the part of the customer, in particular, but not only, until full payment of the agreed fee. The regulations regarding reservation of ownership in point 9 are - in the absence of any mandatory legal provisions - expressly also to be applied to IP. Unless any deviating agreement is made between the contractual parties, following complete fulfilment of all obligations by the customer, both contractual parties retain the right to the intellectual ownership arising as a result of the development order in equal parts.
- 15.4 The customer grants Mattro and its legal successors an unlimited, transferable, irrevocable, exclusive, free right of usage that is unlimited temporally and geographically, and which is available for sublicensing, with regard to all products generated in connection with the development order, for all areas of application. In particular (but not exclusively), inventions, developed processes, software, data, experiences and all works protected by copyright, including all drawings, descriptions, test designs, models and construction samples [prototypes] in all development and production phases are regarded as products in the sense of this provision, regardless of their protectability.
- 15.5 Should Mattro present a patentable idea during the course of the development order, this circumstance must be reported to the customer in writing. Should the customer not announce their interest in the (joint) patenting of the idea, in writing and within a four-week period from receipt of the written notification, Mattro alone is authorised to apply for a patent with respect to the patentable idea, without any geographical, temporal and/or content-related limitation, and to solely own and use this patent application and/or this patent.



## **16. Final Clauses**

- 16.1 Any change and/or supplement to these GTCs must be made in writing. This also applies to the revocation of this obligation to use the written form.
- 16.2 Unless any deviating agreement is reached between the contractual parties, the place of fulfilment is the business premises of Mattro in Schwaz. The sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship is the court responsible for such matters for Schwaz. Mattro is however authorised to file an action at the headquarters of the customer.
- 16.3 The parties may also mutually agree in writing to have recourse to a court of arbitration.
- 16.4 With regard to all legal relations arising from this contractual relationship, the parties agree to the use of the law of the Republic of Austria, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.5 The customer hereby expressly consents to the processing for customer care purposes of their personal data, in particular their name, address and date of birth, which are known within the scope of this commercial relationship or which shall become known in the future, and to transfer and consignment of this data to credit protection associations for the purpose of creditor protection. For the purpose of clarification, it is recorded that the customer may revoke their consent to data transfer at any time in writing, without this revocation having any impact on the substance of the commercial relations between Mattro and the customer.

## **17. Severability Clause**

Should individual provisions in these GTCs or other agreements made between the parties be invalid or unworkable, or become invalid or unworkable following conclusion of contract, the validity of the agreement concluded between the parties (in particular these GTCs) remains unaffected. The invalid or unworkable provision should be replaced by the provision whose effects come closest to the commercial goals pursued by the contractual parties by means of the invalid or unworkable provision. The above provisions apply accordingly should the agreement concluded by the parties (in particular these GTCs) be incomplete.

