

§ 1 Scope of Application and Definitions

- These General Terms and Conditions of Business ("GTC") shall apply exclusively to legal relations between GHM Messtechnik GmbH ("GHM"), consisting of GHM Greisinger, GHM Honsberg, GHM Martens and customers. The GTC also apply to the sale of DELTA OHM and Val.co products as a member of the GHM Group via GHM Messtechnik GmbH. Any provisions which deviate from, contradict or supplement these GTC shall, even upon knowledge thereof, not be recognised and are hereby expressly objected to, unless there is express and written agreement to the customer's contracting terms and conditions of business.
- A customer within the meaning of these GTC is an entrepreneur (§ 14 BGB), legal person under public law or special fund under public law which submits an order to GHM or concludes a contract with GHM. GHM does not supply to consumers (§ 13 BGB).
- GHM reserves the right to change the GTCs for future orders. In this regard, please check the GHM website.

§ 2 Conclusion of Contract

- The product catalogues issued by GHM as well as other brochures and technical documentation do not constitute an offer to conclude a contract but rather merely an invitation to the customer to submit a written offer to GHM to conclude a contract.
- Offers by GHM are subject to confirmation and are non-binding, unless expressly designated as binding by GHM. Contracts are only concluded by way of written order confirmation by GHM or by way of delivery. Orally issued orders shall only become effective once confirmed in writing by GHM. Amendments to a concluded contract must be confirmed in writing by GHM in order to be effective.
- A customer order which qualifies as an offer to conclude a contract may be accepted by GHM within 2 weeks. Acceptance and dispatch of the ordered products shall have the same effect.

§ 3 Scope of performance obligation

- The scope of the performance obligation of GHM shall be determined in accordance with the relevant contract. GHM reserves the right to make changes to technical data as well as changes to form, colour and/or weight within reasonable bounds.
- GHM is entitled to render partial performance where this is reasonable according to the individual circumstances of the customer. The invoices issued in this regard are payable independently of the total delivery.
- Product details and usage criteria in product catalogues, brochures and technical documentation as well as other information material provided by GHM to the customer and product descriptions are not to be understood as either guarantees of a particular quality of the products or as a simple agreement as to quality; such quality guarantees and quality agreements must be expressly agreed in writing.

§ 4 Prices / Payments / Interest on Late Payments / Set-off

- All prices specified in the product catalogues, brochures and technical documentation as well as other information material issued by GHM are exclusive of the relevant applicable VAT, unless they are stated to include VAT. Packaging, freight, postage, requested export certificates as well as any other shipping costs and insurance are additionally to be paid by the customer unless otherwise agreed.
- Unless fixed prices are expressly agreed, the specified prices are based on GHM's production costs at the time of order confirmation. In the event of unforeseeable increases in production costs that are beyond GHM's control, GHM reserves the right to increase prices accordingly where the delivery or service is not required to be rendered within 4 months of conclusion of the contract.
- Unless otherwise agreed in writing, all payments must be made within 30 days of the date of invoice without deduction in full to the specified payment agent.
- If payments are deferred or the customer is in default of payment, the statutory interest for late payment between businesses shall be due (currently 9 percentage points over the relevant base interest rate in accordance with § 288 para 2 BGB). According to § 286 para 3 BGB, default of payment – even without a notice – occurs where the customer does not make payment within 30 days of the due date for payment and receipt of an invoice or an equivalent payment schedule.
- The customer only has rights of set-off or retention to the extent that its claim is legally established or undisputed. In the event of defective delivery, the counter-claims of the customer in particular in accordance with § 8.2 of these GTC shall remain unaffected.

§ 5 Force Majeure

Unforeseen breakdowns, delayed deliveries or non-delivery by suppliers of GHM (including intra-group suppliers of GHM), shortage of labour, power or raw materials, strikes, lockouts, difficulties in providing means of transport, traffic disruptions, government orders, embargoes, boycotts and other events of force majeure shall relieve the party affected thereby of its obligation to supply or accept the items, as the case may be, for the duration of and to the extent of such hindrance. If, in consequence, delivery or acceptance is delayed by more than one month, either party may, to the exclusion of all further claims, withdraw from the contract in respect of the quantities affected by such delivery or acceptance hindrance.

§ 6 Delivery and Transfer of Risk

- The place of performance and fulfillment is the place from which delivery is effected.
- In the event that the customer requests that the contractual item is sent to another location, the risk of accidental loss passes to the customer upon handover of the item to the first freight carrier. This shall also apply if the customer refuses to accept the delivery. Unless agreed otherwise, GHM is free to select the manner of shipping. The packaging material is to be recycled or properly disposed of by the customer at its own cost. § 11 shall apply mutatis mutandis.
- Delivery dates and deadlines are only binding if the contracting parties have made an express agreement to this effect. In case of doubt, delivery deadlines begin on the date of order confirmation. If there is a temporary hindrance to performance which is beyond GHM's control, the delivery dates and deadlines shall be extended correspondingly. This applies in particular in cases of force majeure within the meaning of § 5. Occurrence of delivery delay by GHM shall be determined in accordance with legal regulations. In any case a notice by the customer shall however be necessary.

§ 7 Retention of Ownership

- Until full payment of all of our present and future claims arising out of the ongoing business relationship with the customer ("secured claims") we retain ownership of the contractual items. The customer shall handle the contractual items with care and shall store them safely at no cost.
- Prior to full payment of the secured claims, the contractual items subject to retention of ownership may not be pledged to third parties or used as security. The customer shall notify GHM promptly in writing if an application is filed for the initiation of insolvency proceedings or where third parties have access (e.g. by way of pledges) to the contractual items belonging to GHM.
- Where the customer is in breach of the contract, in particular in the case of non-payment of the due amount under the contract, GHM may in accordance with legal regulations withdraw from the contract and/or demand that contractual items be returned on the basis of the retention of ownership. The demand for return does not simultaneously constitute the withdrawal; GHM is moreover entitled to make the demand for return and reserve the right to withdraw. If the customer does not pay the due amount under the contract, GHM may only assert these rights if GHM has given the customer a reasonable deadline to make payment without success or where such a setting of a deadline is not required in accordance with legal regulations.
- Until the time of withdrawal in accordance with (c) below, the customer is authorised to continue to sell on and/or to process the contractual items which are subject to retention of ownership within the ordinary course of business. In such a case the following supplemental provisions shall apply:
 - The retention of ownership shall extend to the full value of products resulting from the processing or combining of the contractual items, whereby GHM shall remain the manufacturer. In the event that processing or combining uses third party items which are subject to ownership rights, the customer hereby transfers to GHM co-ownership in the proportion of the invoice value of the processed or combined contractual items. GHM hereby accepts the transfer. Otherwise, the same shall apply to the resulting product as to the contractual items delivered under retention of ownership.
 - The customer hereby assigns to GHM as security any claims against third parties arising out of the onward sale of the contractual items in their entirety or in the amount of any proportion co-owned by GHM in accordance with the previous paragraph. GHM hereby accepts the assignment. The obligations of the customer set out in paragraph 2 shall also apply in regard to assigned claims.
 - The customer shall remain authorised to redeem the claim in addition to GHM. GHM is obliged not to redeem the claim as long as the customer meets its payment obligations to GHM, there is no defect in its ability to perform and GHM does not assert ownership by exercising a right in accordance with paragraph 3. If this is however the case, GHM may demand that the customer discloses the claims assigned to GHM and their creditors, provides all necessary information for redemption, hands over the associated documentation and informs the (third party) creditor of the assignment. Furthermore, in such a case GHM shall be entitled to revoke the authorisation of the customer for the onward sale and processing of the items subject to retention of ownership.
 - If the realisable value of the security exceeds the claims of GHM by more than 10%, GHM shall at the request of the customer select and release security.

§ 8 Guarantee

- The customer shall check whether the delivered contractual item is in accordance with the contract and is suitable for the intended purpose. The obligation to inspect and issue a complaint in accordance with §§ 377, 381 HGB shall also apply to customers who are not fully vested commercial agents within the meaning of the law. Apparent defects shall be notified to GHM within two weeks and non-apparent defects promptly after discovery. Damage to packaging is to be noted in the freight paperwork or notified in writing to the delivery shipping service and to GHM by the 6th day after delivery at the latest.
- In the case of duly notified defects, at its own choice and taking into consideration the interests of the customer, GHM shall either rectify the defect or deliver defect-free replacement items. If these measures are not successful after two attempts to rectify, the customer may exercise its statutory rights. The right of GHM to refuse to rectify in accordance with the statutory requirements shall remain unaffected.
- All guarantee claims lapse 12 months after the statutory start date of the prescription period. This deadline does not apply if the law according to § 438 para 1 number 2 BGB (buildings and items for buildings) and § 634a para 1 no 2 BGB (building faults) prescribes longer deadlines, or in case of deliberate action, fraudulent concealment of the fault, or if a guarantee of quality has not been fulfilled.

§ 9 Exchanges and Repairs outside of the Guarantee

- GHM is not obliged to give an exchange and in the event of custom orders, exchange shall be excluded.
- Where GHM however voluntarily decides that it will take back a standard item, without any obligation in accordance with guarantee regulations or any guarantee given, 20% of the purchase price shall be retained where the item is undamaged. In the case of damaged goods, any additional necessary repair costs shall also be deducted.

- Where GHM is to perform repairs for the customer which do not follow within the framework of the guarantee or any given guarantee, the repair item shall be sent back at the cost of the customer. Where a cost estimate is requested by the customer for the repair, GHM is entitled to additionally invoice this work in the amount actually incurred.

§ 10 Limitation of Liability

- The liability of GHM for damages, regardless of the legal basis, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and unlawful acts (unerlaubte Handlungen) is, to the extent that this involves culpability (Verschulden), limited in accordance with this § 10.
- GHM is not liable in the case of simple negligence of its management bodies, legal representatives, employees or other vicarious agents (Erfüllungsgehilfen), to the extent that this does not relate to a breach of material contractual obligations (vertragswesentliche Pflichten). Material contractual obligations are obligations compliance with which facilitates proper performance of the contract, so in particular the obligation to deliver in a timely manner, the conformity of the delivered items with the agreed quality characteristics, as well as advisory, protective and due care obligations, and the protection of life or health of the customer's personnel or the protection of its property from material damage.
- Where GHM is liable in accordance with and on the grounds of § 10.2, such liability shall be limited to damages which GHM foresaw upon conclusion of the contract as a possible consequence of a breach of contract or which GHM should have foreseen when exercising due care and attention (verkehrssübliche Sorgfalt). Indirect damages and consequential damages, which are the consequence of defects in the delivered item, shall only be compensated to the extent they are typically to be expected in the course of a proper use of the delivered item.
- In the event of a delivery delay caused by our simple negligence, the amount of default damages which the customer may claim shall be limited to a maximum of 5% of the agreed net contract price for each complete week of delay and in total to a maximum of 20% of the agreed net contract price.
- Where we provide technical information or act in a consulting capacity and such information or consulting is not included in the contractually agreed scope of performance owed by us, this shall take place free of charge and under exclusion of any liability.
- The aforementioned exclusions and limitations on liability shall apply to the same extent for the benefit of management bodies, legal representatives, employees or other vicarious agents (Erfüllungsgehilfen) of GHM.
- The limitations set out in this § 10 shall not apply to liability of GHM for willful misconduct, for guaranteed quality characteristics, for damage to life, body or health or in accordance with the German Product Liability Act (ProdHaftG).
- If the customer sells the delivered item unchanged or after processing, transforming or combining with other items, the customer shall release us internally from all product liability claims by third parties, to the extent that the customer is responsible for the circumstances giving rise to the liability.

§ 11 Disposal of Electronic Devices

- To the extent that electronic devices are the contractual items, the disposal of old devices (§ 3 no 3 ElektroG) used outside private households (§ 3 no 5 ElektroG) shall be subject to the following paragraphs. For any technical questions, you can find the contact details at <https://www.ghm-group.de/en/service/>.
- The customer shall dispose of the delivered electronic devices at the end of their useful lives at its own cost and in accordance with the relevant legal regulations. The customer shall release GHM from manufacturer obligations under § 19 ElektroG and in that context from any associated claims by third parties.
- In the event that delivered devices are transferred to commercial third parties, the customer is obliged to also subject such third parties in writing to the obligation to properly dispose of the devices at the end of their useful lives, to bear the costs thereof and in the event of a further transfer, to effect a transfer of the obligation in accordance with this provision.
- In the event that the customer fails to contractually oblige third parties to undertake proper disposal and to oblige third parties to pass on the obligation in accordance with § 11.2, the customer shall be obliged to take back the delivered goods at the end of their useful lives at its cost and to dispose of them properly in accordance with legal regulations. This shall also apply where the obligation of the third party was not made in writing and the third party disputes contractual assumption of the duty to dispose.
- GHM's right to have the customer hold harmless and release GHM will not expire before two years have passed after the final use of the device. This two-year expiry restriction begins no earlier than the date of GHM receiving a written notification from the customer of the end of the device's use. However, the claim to hold harmless and release will expire no later than 30 years after it comes into existence.

§ 12 Confidentiality

- The contracting parties are obliged to make all information provided by the other contracting party for the purpose of fulfilling this agreement, which is marked as confidential or which is under the given circumstances recognisable as business or trade secrets ("Technical Information"), accessible only to their own employees who are authorised to know it and to ensure that no unauthorised persons gain access to any Technical Information.
- The obligation to maintain confidentiality in accordance with paragraph 1 shall apply without limitation, without the need for any special marking or classification of this information as confidential, to all information that GHM receives during the performance of laboratory activities or that is created by GHM ("Laboratory Information").
- The only exceptions to the confidentiality obligations above apply to Technical Information and Laboratory Information that can be proven to already be publicly and lawfully accessible from other sources.
- The parties shall limit the use of Technical Information and Laboratory Information of the respective other contracting party solely to the performance of this agreement and shall not use it in any way for their own purposes and shall refrain from any publication. Upon execution of this Agreement, all Technical Information and Laboratory Information in physical form shall be returned. Copies of Technical Information and Laboratory Information, in whatever form, shall be destroyed to the extent that this is actually and legally reasonable.
- If necessary, the contracting parties shall conclude a separate, more detailed confidentiality agreement.

§ 13 Data Protection

- The contracting parties are obliged to comply with Regulation (EU) 2016/679 ("General Data Protection Regulation" ("DSGVO")), the German Federal Data Protection Act ("BDSG") and all other data protection laws applicable to their contractual relationship.
- The contracting parties are obliged to instruct their employees and other vicarious agents (Erfüllungsgehilfen) used by them about the provisions of the DSGVO, the BDSG and other data protection provisions applicable to the contractual relationship of the parties and to oblige them to comply with these provisions.
- The contracting parties are obliged to maintain strict confidentiality when processing personal data, which they receive within the scope of their contractual relationship ("Personal Data"). This obligation shall survive the termination of the contractual relationship of the parties.
- The contracting parties oblige themselves to process Personal Data exclusively for the provision of the respective agreed services (purpose limitation) and to protect them by appropriate security measures (Art. 32 DSGVO). The contracting parties shall notify the other contracting party in text form promptly of any breach of the protection of Personal Data pursuant to Art. 4 no. 12 DSGVO.
- The disclosure of Personal Data to third parties is prohibited unless the other contracting party has previously consented to such disclosure in text form. This shall also apply to the disclosure of Personal Data to a commissioned data processor (Auftragsdatenverarbeiter).
- The contracting parties oblige themselves to process Personal Data only within the territory of the European Union and the European Economic Area.
- As soon as the processing of Personal Data is no longer necessary for the provision of the agreed services, the relevant contracting party shall return the Personal Data and delete it thereafter, unless further processing is required by law.
- If a contracting party processes Personal Data on behalf of the other contracting party in the context of the provision of services, the contracting parties shall conclude an agreement on commissioned processing (Auftragsverarbeitung) in accordance with Article 28 DSGVO.

§ 14 Miscellaneous

- Unless otherwise agreed, the law of the Federal Republic of Germany shall exclusively apply, under the exclusion of the rules concerning the conflict of laws applicable under that law. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is not applicable.
- The place of jurisdiction shall be Wuppertal or at the election of GHM, the competent court at the seat of the customer.
- In the event that a provision of these GTC or of the contract is or becomes wholly or partly void, ineffective or unenforceable, the effectiveness and enforceability of all other remaining provisions shall not be affected thereby. The void, ineffective or unenforceable provision shall be deemed replaced by such effective and enforceable provision which comes as close as possible to the commercial meaning and purpose of the void, ineffective or unenforceable provision with regard to its object, scope, time, place and scope of application. This shall apply mutatis mutandis to any gaps in these GTC or the contract.
- The contractual language shall be German. In the event that interpretation is necessary, only the German version of this text shall be relevant. Translations into other languages are exclusively for information purposes.

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GHM Messtechnik GmbH | GHM GROUP CORPORATE

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