

**1 Scope of application**

- 1.1 These general terms and conditions of business (GTC) of HakaGerodur AG (**HakaGerodur**) apply to all deliveries made by HakaGerodur to customers, in particular to deliveries of pipes, profiled sections, fittings and accessories as well as systems, whether standard products of HakaGerodur or products specially manufactured to customer specifications.
- 1.2 They apply as soon as they have become a part of the contract with the customer. This shall be the case if the GTC are expressly specified to be a part of the contract, including where HakaGerodur makes reference to these GTC whether as enclosure to or imprint on quotations, confirmations of orders, delivery notes and invoices, or whether notified by the respective link on the website of HakaGerodur, where the text of these GTC may be viewed ([www.hakagerodur.ch/agbe.pdf](http://www.hakagerodur.ch/agbe.pdf)). These GTC shall, in the case of a verbal order without written confirmation of order or written contract, at least apply to future orders made by this customer if reference is made to these GTC in the invoice or delivery note for the first consignment.
- 1.3 Individual written agreements shall take priority if they shall conflict with these GTC in a particular case. The GTC of HakaGerodur shall take priority if these GTC conflict with the general purchase terms of the customer. Any terms specifying otherwise in the purchase terms of the customer or of a third party shall only be binding if they have been expressly accepted in writing by HakaGerodur. The failure by HakaGerodur to object to the general terms and conditions of business of the customer shall not under any circumstances be construed as acknowledgement of or consent to the application of those general terms and conditions of business.

**2 Validity of quotations and conclusion of contracts**

- 2.1 Quotations made by HakaGerodur are non-binding and subject to confirmation unless stated otherwise in the quotation.
- 2.2 Unless and until a contract is concluded, all documentation provided along with the quotation shall remain the property of HakaGerodur and any use of such documentation is prohibited.
- 2.3 The contract between HakaGerodur and the customer does not require any particular form. If a framework agreement has been entered into with the customer, in which prices and conditions are specified and if this shall not provide otherwise, an individual call for delivery of products by the customer by way of a purchase order and a confirmation of order by HakaGerodur shall be binding for both parties.

**3 Delivery dates, delivery and returned purchases**

- 3.1 Delivery dates or delivery periods are binding if they have been agreed in writing. HakaGerodur shall inform the customer as soon as possible if it is unable to meet the agreed dates or periods. The customer shall grant HakaGerodur a reasonable extension of time. Unless otherwise required by law, HakaGerodur shall not incur any liability for late delivery pursuant to Articles 190 or 191 of the Swiss Code of Obligations, for auxiliary agents or for slight or moderate negligence, insofar as applicable.
- 3.2 No delay shall arise and the obligation of HakaGerodur to make delivery shall be suspended for the particular period, if a delivery date cannot be met for reasons beyond the control of HakaGerodur, such as exceptional natural events (flooding,

hurricanes, land slides etc.), conflagration, war, insurrection, revolution, internal disorder, strikes, terrorism, significant operational disruptions, sabotage, epidemics/pandemics, government regulations, unavailability or insufficient availability of raw materials, energy or process materials as well as a lack of or inadequate transport capacity (**force majeure**). HakaGerodur shall notify the customer as soon as possible in respect of the occurrence of such events and take all reasonable measures in order to restore readiness to deliver. The customer may cancel the delivery after expiry of 6 months. A claim to compensation by the customer shall not exist.

- 3.3 HakaGerodur shall have the right to extend the period for delivery or to postpone delivery dates correspondingly if the customer shall not fulfil his duty to co-operate (for example, acceptance of samples, notification of technical specifications or approval of drawings etc.). Furthermore, HakaGerodur shall be entitled to reasonable extension of the delivery period or postponement of the delivery date if it is unable to manufacture or deliver products or systems in due time on account of force majeure or shortages of raw materials.
- 3.4 Delivery to the customer of products and systems is made ex-works HakaGerodur (i.e. CH-Gossau SG or CH-Benken SG or D-Neustadt / Sachsen) (INCOTERMS 2020).
- 3.5 HakaGerodur may make part deliveries.
- 3.6 Excessive / short consignments of +/- 5% of the agreed quantity shall be permissible.
- 3.7 HakaGerodur shall not be under an obligation to accept return of batches which the customer shall not or no longer require. Conditions shall be agreed in advance in as far as HakaGerodur by way of good will shall exceptionally accept return of products or systems delivered. A handling fee shall be levied in all instances.

**4 Guarantees**

**4.1 Warrantee**

- 4.1.1 HakaGerodur warrants that the products and systems supplied correspond with the product specifications agreed in writing or assured by HakaGerodur in writing.
- 4.1.2 Furthermore, HakaGerodur warrants that the products and systems supplied are free from defects in materials and manufacture. The appropriate industrial standards in respect of dimensions and tolerances apply; in the absence of such appropriate industrial standards, the factory standards of HakaGerodur apply.
- 4.1.3 HakaGerodur gives, however, no warranty for defects which are the consequence of damage to the products or systems after despatch from the factory, improper storage, incorrect processing or improper use by the customer or his purchaser. It is the duty of the customer to take all the necessary care in handling, storing and processing which may be expected of a specialist. The customer is informed that the provision of advice by HakaGerodur shall not release him from his liability to inspect the products of HakaGerodur in order to ensure that they are suitable for the intended purposes.
- 4.1.4 HakaGerodur does not accept any liability for the results of work thereby achieved if HakaGerodur makes equipment for processing the products or systems available to the customer on or without payment.

## 4.2 Examination and complaints

- 4.2.1 It is the duty of the customer to inspect the products and systems supplied after delivery in respect of identity, externally visible damage (in particular transport damage) and patent defects and to give notice of any defects in writing within five working days of delivery at the latest.
- 4.2.2 The customer shall notify in writing any latent defects without delay if he shall discover such at a later date.
- 4.2.3 The customer shall be under an obligation to pay the price for undisputed batches in due time if the customer shall notify defects in only one batch of the products or systems supplied.

## 4.3 Claims of the customer

- 4.3.1 HakaGerodur shall be under a duty to make a further delivery of a corresponding quantity of products or systems free of defect, if a product or system delivered shall prove to be defective and the customer shall have notified the defect in due time. The customer shall be subject to a duty to minimise losses as soon as he establishes or is informed that a product is faulty or defective. If HakaGerodur shall fail to make a further delivery within a reasonable period, the customer may either pay a reduced price to be agreed or cancel the contract and demand refund of any payments made against return of the defective products or systems.
- 4.3.2 HakaGerodur shall be under an obligation to compensate for such damage to the product if damage arises for the customer as a consequence of a defective product or system, in as far as the customer can prove to it wilfulness or gross negligence or in the event of mandatory liability under the Swiss Product Liability Act.
- 4.3.3 Claims by the customer in the event of a defective consignment are conclusively specified in this section. For the limitation of liability, in particular in relation to consequential losses, please refer to section 5 below.

## 4.4 Guarantee period

Claims by the customer arising from a defective consignment lapse on expiry of one year following delivery unless a longer limitation period is prescribed by law.

## 5 Liability of HakaGerodur/disclaimer

- 5.1 These GTC conclusively regulate all claims of the customer, including in particular those arising from a breach of contract and the related legal consequences, irrespective of their basis in law. Any claims not specifically mentioned, including in particular to claim any further damages, a reduction of the price, or the termination of or withdrawal from the contract, shall not be available. There shall be no entitlement to compensation for any losses not affecting the deliverable item, such as specifically due to production stoppage, loss of use, loss of orders, loss of profit, the failure to achieve savings, loss of handling, processing, assembly or energy costs, data loss, search costs, additional testing, sorting and other handling costs, costs for lost input materials or disposal costs, as well as compensation for any such claims brought by purchasers from the customer or third parties. In particular, HakaGerodur declines all liability for any advice relating to products or systems. The disclaimer shall also apply insofar as HakaGerodur bears any liability for its auxiliary agents.
- 5.2 The customer is informed that the products are supplied as individual parts exclusively in accordance with the technical specifications individually agreed upon or respectively the

HakaGerodur data sheet valid upon delivery. Whether and how these products will subsequently be used does not fall within the detailed technical knowledge of HakaGerodur. Accordingly, no liability whatsoever shall be incurred for any overall system within which the products may be used following delivery by HakaGerodur. The customer is responsible for compliance with the regulatory requirements applicable to the end product, and HakaGerodur expressly declines any liability in this regard.

- 5.3 The disclaimer shall only apply unless otherwise required by law, such as in particular in relation to wilful wrongdoing or gross negligence on the part of the supplier, defects that have been withheld in bad faith, direct claims relating to personal injury and mandatory claims under applicable product liability legislation.

## 6 Prices and terms of payment, communication of customer data

- 6.1 The list prices of HakaGerodur apply unless otherwise agreed in writing. If not otherwise noted, prices are ex-works HakaGerodur without packaging, shipping/freight, insurance, tax, charges, customs duties and any other levies, etc..
- 6.2 HakaGerodur may adjust the agreed prices if prices of raw materials shall alter significantly. A change in raw material prices by +/- 5% shall entitle to an adjustment of prices, unless otherwise agreed in an individual case.
- 6.3 Deliveries are made against invoice. Invoices from HakaGerodur are payable net within 30 days following the date on the invoice. The customer is automatically in arrears after expiry of this period for payment, without the requirement of a reminder.
- 6.4 HakaGerodur reserves the right to make deliveries only against payment in advance, letter of credit confirmed by a Swiss bank or against other security, in the case of doubt as to solvency of the customer.
- 6.5 Payment by way of offsetting against counterclaims is only permitted if such counterclaims have been expressly acknowledged by HakaGerodur or established with full legal effect.
- 6.6 HakaGerodur reserves the right to communicate to credit information agencies experience with payments from customers.

## 7 Reservation of legal ownership

- 7.1 Products and systems delivered remain in the legal ownership of HakaGerodur until full payment. This authorizes HakaGerodur to taking any necessary precautions in order to allow the reservation of legal ownership to come into existence without further participation of the customer, particularly its entry in the corresponding register.

## 8 Legal ownership of tools, moulds and equipment

- 8.1 All tools and moulds which are used for manufacturing the products and systems are the legal ownership of HakaGerodur, including where their costs of production shall have been paid wholly or partially by the customer. Lending tools and moulds to the customer or a third party is barred. HakaGerodur does, however, undertake in the absence of agreement to the contrary in writing, not to manufacture for a third party with tools and moulds which the customer has financed in full.

- 8.2 HakaGerodur may dispose of the tools and moulds, more particularly destroy them, if no re-ordering is made within five years.
- 8.3 Equipment for processing the products or systems shall remain the legal ownership of HakaGerodur, if HakaGerodur shall make this available to the customer. The customer shall return this properly cleaned to the factory of HakaGerodur on expiry of the agreed period of use and shall be liable for excessive wear and for all damage as well as for the costs of any subsequent cleaning.

## **9 Intellectual property rights**

- 9.1 Legal ownership of the know-how developed and/or applied by HakaGerodur in relation to performance shall under all circumstances lie with HakaGerodur. It is not permitted to share any know-how arising in relation to the order with any third party, including companies that are closely affiliated with the customer. The customer shall bear sole responsibility for ensuring that his products and services into which the products of HakaGerodur are incorporated, or respectively on which they are based, do not in any way infringe any industrial property rights of HakaGerodur or of third parties. In the event that any third party industrial property rights are infringed, the customer undertakes to take over the defence of the dispute with the third party and to hold HakaGerodur fully harmless.

## **10 Confidentiality, data protection**

- 10.1 Each contractual party shall treat any commercial and technical information concerning the business operations of the other contractual party that may come to its attention during the course of their business relationship in the strictest confidence and shall refrain from disclosing it to third parties or using it for any purposes other than those agreed upon.
- 10.2 Personal data shall only be processed by HakaGerodur in accordance with the applicable law. For information on the processing of personal data in connection with HakaGerodur's business activities, please refer to the attached data protection policy, which is also available on our website (<https://www.hakagerodur.ch/DSEBD.pdf>).

## **11 Place of performance, applicable law and place of jurisdiction**

- 11.1 The sole place of performance for all services provided in connection with a delivery by HakaGerodur is the corresponding location of the supply factory of HakaGerodur, i.e. CH-Gossau SG or CH-Benken SG or D-Neustadt / Sachsen.
- 11.2 Solely the laws of Switzerland shall apply to deliveries by HakaGerodur, including the Vienna Sale of Goods Law (United Nations Treaty concerning contracts affecting international sale of goods dated 11th April 1980) in the case of international relationships.
- 11.3 Both parties accept exclusive jurisdiction of the judge in the court of justice at St. Gallen, Switzerland, for all disputes arising from or in connection with deliveries by HakaGerodur.

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