



## **General Terms and Conditions**

of

**DYNA-MIX GmbH  
FN 593314 x  
Gartenstraße 48a  
A-4073 Wilhering**

As of: February 2023

## 1. Preamble

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**1.1** DYNA-MIX GmbH (hereinafter also referred to as “DYNA-MIX” for short) is a limited liability company registered in the commercial register of Linz Regional Court under FN 593314 x with its registered office in Wilhering and its business address at Gartenstraße 48a, 4073 Wilhering, Austria.

**1.2** DYNA-MIX concludes contracts with its customers (hereinafter also referred to as “**contracting party**”) exclusively on the basis of these General Terms and Conditions (hereinafter also referred to as “**GT&C**” for short).

## 2. Area of validity

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**2.1** All services of DYNA-MIX are carried out exclusively on the basis of these GT&C in the respective valid version. It is explicitly stated that GT&C, terms of purchase, terms of delivery, forms or similar documents of the contracting party are in no case part of the contract. DYNA-MIX expressly contradicts GT&C, terms of purchase, terms of delivery, forms or similar documents of the contracting party.

**2.2** It is stated that DYNA-MIX always only enters business relations with businessmen or businesses. The validity of these GT&C for consumers is therefore excluded.

**2.3** With its order, the contracting party declares that it had the possibility of taking note of the GT&C and that it agrees with the contents of the GT&C. The GT&C are available for downloading from the website at <https://www.dyna-mix.at> at any time, irrespective of whether they have already been handed over, and will also be sent electronically on request.

**2.4** These GT&C are binding for all current and future business transactions, even if no express reference is made to them.

**2.5** Regulations deviating from or supplementing these GT&C require the written form and only become part of the contract if this has been expressly confirmed in writing by DYNA-MIX. Furthermore, deviating or supplementary regulations are only valid for the respective legal transaction and not for subsequent transactions.

## 3. Placing of order, conclusion of contract

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**3.1** The contracting party orders by e-mail, by phone or by WhatsApp. The order of the contracting party (offer) is not considered accepted (acceptance) until an order confirmation is issued by DYNA-MIX, whereby a contract is concluded. The acceptance of the offer by DYNA-MIX is exclusively based on these GT&C. Any verbal agreements between DYNA-MIX and the contracting party made before conclusion of the contract are considered cancelled with the conclusion of the contract.

**3.2** The presentation of products and/or services on the website, in brochures etc.

does not represent a legally binding offer, but is an invitation to make an offer. The contents of brochures, advertising announcements etc. distributed by DYNA-MIX do not become part of the contract unless explicit reference is made to them.

**3.3** Offers and other declarations from DYNA-MIX are subject to change, as far as they are not expressly designated as binding.

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#### **4. Scope of services and service deadlines**

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**4.1** The performance dates given by DYNA-MIX are non-binding, unless otherwise agreed in the offer.

**4.2** In case of a delay in delivery related to DYNA-MIX, the contracting party is only entitled to withdraw from the contract if it has given DYNA-MIX a grace period of at least four weeks in writing before the declaration of withdrawal.

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#### **5. Place of performance, prices, payment modalities**

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**5.1** Place of performance for delivery and payment is the registered office of DYNA-MIX.

**5.2** The prices listed are in euros. All prices and charges are, unless agreed otherwise in individual cases, to be understood as net prices excluding possible mandatory value added tax and other taxes or charges as well as excluding packaging surcharge, transport costs and possible processing fees.

**5.3** The prices agreed at the time of the conclusion of the contract shall be charged. The conditions agreed upon with the contracting partner according to the respectively applicable DYNA-MIX offers/price list apply. The DYNA-MIX offers/price list was handed out to the contracting party before conclusion of the contract and is the basis of the present GT&C.

**5.4** The invoices issued by DYNA-MIX are due 7 days after the invoice date without deduction and free of charges, unless deviating terms of payment were agreed upon. Payments are considered as made on the day DYNA-MIX can dispose of them completely, irrevocably and freely. The receipt of payment into the account of DYNA-MIX is decisive. Payments are, even in case of different dedication, first credited to compound interest, interest and additional expenses, pre-trial costs, then to outstanding capital, starting with the oldest debt.

**5.5** Subject to further claims, DYNA-MIX is also entitled to immediately call due all outstanding claims against the contracting partner. Furthermore DYNA-MIX is entitled to withhold individual or all services until complete payment of the purchase price if the contracting partner is in default of payment.

**5.6** In case of default of payment the contracting partner is obliged to refund DYNA-MIX all expedient pre-trial costs spent.

**5.7** The contracting partner is not entitled to withhold payments because of

incomplete total delivery, guarantee or warranty claims or complaints.

**5.8** DYNA-MIX is free to send the invoices either by post or electronically.

**5.9** A set-off of the contracting partner against claims of DYNA-MIX with counterclaims of whatever kind is excluded.

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## **6. Secrecy**

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**6.1** The contracting partner hereby irrevocably undertakes to treat all trade and business secrets made accessible to it by DYNA-MIX, or otherwise made known to it in connection with or on the basis of a business relationship or contact with DYNA-MIX, confidentially and not to make them accessible to third parties in any way whatsoever without the consent of DYNA-MIX. Furthermore, the contracting party commits itself to use information only on a "need to know" basis and only within the scope of the contract concluded.

**6.2** The confidentiality obligation remains valid for three years after termination of the business relation with DYNA-MIX or independent of a business relation for three years after submission of proposal by DYNA-MIX.

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## **7. Liability and warranty**

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**7.1** DYNA-MIX is only liable for direct damages if they have been caused by intent or gross negligence. In case of slight negligence, DYNA-MIX is only liable for personal injuries.

**7.2** The liability expires six months after the contracting party has become aware of the damage and the damaging party.

**7.3** DYNA-MIX is not liable for indirect damages, loss of profit, loss of interest, missed savings, consequential and financial damages or damages from claims of third parties. The liability of DYNA-MIX is also limited to contract-typical foreseeable damages.

**7.4** If a penalty has been agreed to the disadvantage of DYNA-MIX, the assertion of damages exceeding the penalty or other further claims against DYNA-MIX is excluded.

**7.5** The application of § 924 ABGB (General Civil Code of Austria) is excluded.

**7.6** The contracting party must examine all goods immediately, at the latest within 48 hours after delivery, and to give notice of any defects also within this period. If the contracting party fails to make this notification, it can no longer assert claims for warranty, for damages due to the defect itself or due to an error regarding the defect-free nature of the item.

**7.7** Warranty claims shall become time-barred or shall expire in any case within 6 months after handover to the contracting party.

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## **8. Retention of title**

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DYNA-MIX retains ownership of the goods until full payment has been received.

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## **9. Data protection**

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Personal data of contracting parties is processed within the context of fulfilment of the contract. In the [privacy policy](https://www.dyna-mix.at), available at <https://www.dyna-mix.at> you will find more detailed explanations.

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## **10. Waiver of contestation**

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As far as permissible according to mandatory law, the contracting party waives the contestation of contracts with DYNA-MIX for whatever legal reason, especially because of error, compensation, warranty or for the reasons of § 934 ABGB (shortening over half), demands for adaptation or assertion of changes.

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## **11. Modification of the GT&C**

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**11.1** DYNA-MIX is entitled according to the provisions of this paragraph to change the GT&C at any time and without giving reasons.

**11.2** DYNA-MIX informs the contracting party by e-mail about the new GT&C coming into force. The new GT&C are considered as agreed upon if the contracting party has not objected to their validity within 14 days after receipt of the e-mail. The objection must be made in writing and can also be made by e-mail. The contracting party is informed in the e-mail of the possibility of objection, the deadline and the consequences of inaction. In case of a timely objection, the contractual relationship can be terminated by DYNA-MIX as well as by the contracting party.

**11.3** In case of a contradiction between the current GT&C and the respective provisions stipulated in the individual contract, the provisions stipulated in the individual contract have priority.

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## **12. Other**

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**12.1** These GT&C shall be governed exclusively by Austrian substantive law to the exclusion of international rules of reference and the UN Convention on Contracts for the International Sale of Goods.

**12.2** The exclusive place of jurisdiction for all disputes arising out of or in connection with these GT&C – including any such dispute regarding their existence or non-existence – shall be the competent court in Linz an der Donau.

**12.3** Should any provision of these GT&C be or become legally invalid or unenforceable in whole or in part, this shall not affect the legal validity of all other business provisions. The contracting parties shall replace the legally invalid or unenforceable provision by a valid and enforceable provision that comes as close as

possible to the content and purpose of the legally valid or unenforceable provision.

**12.4** The use of subcontractors by DYNA-MIX is always permissible.