

## General Terms and Conditions of Business

### General Contractual Conditions when purchasing products from Flexschlauch Produktions GmbH's web shop

The General Contractual Conditions - which are available for download here:

<https://www.flexschlauch-luebeck.de/schlauch/de/service/downloads/> and can be printed out

– shall apply within the scope of purchase agreements concluded via the web shop [www.flexschlauch-luebeck.de](http://www.flexschlauch-luebeck.de)

between

#### **Flexschlauch Produktions GmbH**

Reepschlägerstraße 10b

D-23556 Lübeck

Tel.: +49 (451) 899 94 01

Fax: +49 (451) 899 94 40

E-mail: [info@flexschlauch-luebeck.de](mailto:info@flexschlauch-luebeck.de)

registered in the Commercial Register of Lübeck Local Court under HRB (Companies' Section) Record No. 3982, represented by Mr Patrick Henry and Mr Patrick McCaffrey, VAT ID: DE 135 122 024

- hereinafter referred to as "**Flexschlauch**" -

and the Customer designated in Section B and C of the agreement

- hereinafter referred to as "**Customer**" -

## **A. Scope of validity, definitions**

### **Art. 1 Exclusive validity of these General Terms and Conditions of Business**

Exclusively the General Terms and Conditions of Business below, valid as amended as at the date of ordering, shall govern the business relationship between Flexschlauch and the Customer. Any terms and conditions of the Customer deviating from these General Terms and Conditions of Business shall not be recognised unless Flexschlauch explicitly agrees to their validity in writing.

### **Art. 2 Separate provisions for consumers and traders**

Should an agreement be concluded with a consumer, the provisions of this section and the contractual conditions laid down in Section "B. General Contractual Conditions vis-à-vis Consumers" shall apply. Should an agreement be concluded with a trader, the provisions of this section, as well as the remaining provisions of these General Terms and Conditions of Business, shall apply in the form in which they have been individually amended in "C. General Contractual Conditions vis-à-vis Traders".

### **Art. 3 Definitions of Consumer and Trader**

The Customer is deemed a consumer if the purpose of the deliveries and services ordered is not primarily attributable to his or her commercial activity or activity as a self-employed professional. Any natural or legal person or partnership vested with legal capacity, on the other hand, which acts by way of exercising its commercial or independent professional activities when concluding the contract, shall be deemed a trader.

## **B. General Contractual Conditions vis-à-vis consumers**

### **Art. 1 Conclusion of the agreement**

**(1)** The Customer may choose from the range of Flexschlauch Produktions GmbH that can be inspected online, and after entering the desired quantity via the shopping cart button, fill up the electronic shopping cart provided on the website.

**(2)** The presentation and promotion of items in our web shop does not constitute a binding offer to conclude a purchase agreement. This is also the case if we have provided the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards) or any other product descriptions or documents - also in electronic form -, in which we otherwise retain rights of ownership and copyrights.

**(3)** By clicking on the "Commit to paying for an order" button, the Customer submits a binding request to purchase the goods to be found in the shopping cart. Prior to despatching the order, the Customer can once again amend and inspect the data at any time. The request can, however, only be submitted and transmitted if the Customer does not untick the box ticked with the "Accept the General Terms and Conditions of Business of Flexschlauch Produktions GmbH" button, in other words accepts the contractual conditions and has thereby incorporated them into his or her request to purchase.

**(4)** Flexschlauch thereupon sends the Customer an automatic acknowledgement of receipt by e-mail, in which the Customer is once again listed and which the Customer can print out via the "Print" function. The automatic acknowledgement of receipt merely documents that the Customer's order has been received by Flexschlauch and does not constitute an acceptance of the request to purchase.

(5) The agreement only materialises through Flexschlauch's declaration of acceptance, which is sent in a separate e-mail (order confirmation). In either this e-mail or a separate e-mail, however no later than upon the goods being delivered, the text of the agreement (consisting of the order, General Terms and Conditions of Business and order confirmation) is sent to the Customer by us on a permanent data carrier (e-mail or hard copy print-out) (acknowledgement of the contract). The text of the agreement is saved, subject to preserving data privacy.

(6) The agreement is concluded in German.

(7) If you purchase any products from us, we will in future send you promotional e-mails for similar products. You may at any time request to no longer receive such e-mails. To do that, please contact [webmaster@flexschlauch-luebeck.de](mailto:webmaster@flexschlauch-luebeck.de) by e-mail or use the contact details given in the legal notice, or click on the link at the end of the e-mail sent to you. The only costs that will be incurred to Flexschlauch Produktions GmbH you for that will be the transmission costs in line with the basic tariffs.

## **Art. 2 Delivery, availability of goods**

(1) Should no copies of the products selected by the Customer be available as at the date of placing the order, Flexschlauch will inform the Customer about it without delay in the order confirmation. Should the product be permanently unavailable, Flexschlauch shall refrain from issuing a declaration of acceptance. In this case, no agreement shall materialise.

(2) Should the product designated by the Customer in the order only be temporarily unavailable, Flexschlauch shall likewise inform the Customer of this without delay in the order confirmation.

(3) The following delivery restrictions exist: Flexschlauch can only deliver to customers who have their usual place of residence (billing address) in a country that is not subject to export restrictions imposed by the Federal Republic of Germany.

(4) Flexschlauch shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to Flexschlauch's other production requirements or plant conditions, to strike, differences with workmen, lockout, or any labor shortage or difficulty, to fire, flood, accident, quarantine restrictions, earthquake, tornado, disease outbreak, public health crisis, epidemic, pandemic or other casualty or act of God, to war, riot, civil disobedience or other emergency or acts of civil or military authorities, to compliance with orders, priorities regulations or requests of any governmental agencies, to embargoes, failure of Flexschlauch's suppliers to meet delivery schedules or any shortage of raw materials howsoever caused, to inability or delay in obtaining labor or materials, to inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation, to delay in Flexschlauch's Credit Department receiving information upon which its approval of Customer or the Customer Agreement is based, or to cause, condition, or contingency beyond the reasonable control of Flexschlauch. In the event of any of the foregoing, Flexschlauch may apportion its production and all stock material among its customers in such manner as it may consider equitable and extend the time of performance by the period of such delay. Further, if Flexschlauch's supplier pricing goes up due to a Force Majeure event, Flexschlauch may pass that cost to Customer.

The Parties agree to either (I) adjust the price(s) in the Customer Agreement during the period of Force Majeure for performance to continue; or (II) delay the performance until the price(s) return to normal. If the price(s) never come back down, then the change in cost will be adjusted in the Customer Agreement going forward and paid by the Customer once performance resumes.

## **Art. 3 Reservation of ownership**

The goods supplied shall remain the property of Flexschlauch until such time as payment has been made in full.

## **Art. 4 Prices and Shipping and Handling Charges**

(1) All prices specified on Flexschlauch's website are understood to be inclusive of the respective applicable statutory VAT.

(2) In the case of orders having a value of less than € 100.00 we charge a minimum quantity surcharge of € 18.00. We deliver in our packaging units. Any orders for a different quantity will be rounded up.

(3) The corresponding shipping and handling charges are outlined to the Customer on the order form, and are to be borne by the Customer, unless the Customer makes use of his, her or its right of revocation.

(4) The goods are shipped by post, generally using the services of the forwarding agents Hellmann, DHL or DPD. Flexschlauch shall bear the risk of shipping if the Customer is a consumer.

(5) In the event of a revocation, the Customer is to bear the direct costs of return. If you effectively revoke your contractual acceptance in accordance with Art. 3, you may, subject to the statutory prerequisites, request to be reimbursed for any costs of shipping the goods to you already paid by you (costs of original despatch).

(6) Material Cost Changes. In the event the cost for any raw materials (e.g.; Titanium, Aluminum, etc.) increase by 3% from the price used to quote, Flexschlauch may request an equitable adjustment to the prices. Flexschlauch must make the request for the price adjustment in writing and the changes to the prices must be documented in writing.

## **Art. 5 Payment arrangements**

(1) The payment will be processed by our service provider Computop GmbH. We accept the methods of payment listed in our web shop.

**(2)** The Customer may alter the method of payment stored in his or her user account at any time.

**(3)** In the case of orders from customers whose place of residence or business is abroad, or in the event of there being any justified evidence of a risk of defaulting on payment, we reserve the right to only deliver once we have received the purchase price, along with shipping and handling charges (reservation of the right to require advance payment). Should we make use of the reservation of the right to require advance payment, we shall inform you without delay. In such a case, the delivery deadline shall commence upon the purchase price being paid.

**(4)** The purchase price shall be due for payment, and is to be paid, within 30 days of invoicing and delivery and/or acceptance of the goods, unless anything to the contrary has been agreed.

**(5)** Upon the expiry of the above payment deadline, the Customer shall be in arrears. As from this date, we shall be entitled to charge arrears interest in the amount of 5% above the respective base rate of the European Central Bank (ECB). To that extent, we reserve the right to prove greater damage.

**(6)** The Customer's obligation to pay arrears interest shall not exclude further damage caused by delay from being asserted by Flexschlauch.

**(7)** The Customer shall only be entitled to offset any claims against claims of Flexschlauch if the claims have been established with legal finality, Flexschlauch has acknowledged them or the Customer's claims are indisputable. Customers shall also be entitled to offset their own claims against claims of Flexschlauch if they notify us of defects established in the goods or assert any counterclaims based on the same sales contract. As the Customer, you may only exercise a right of retention if your counterclaim is based on the same sales contract.

**(8)** The Customer may only assign claims arising from any contracts concluded with Flexschlauch to third parties with Flexschlauch's written consent.

## **Art. 6 General Liabilities**

**a)** Flexschlauch hereby warrants that all goods supplied are free from defects in material and workmanship that existed when the goods were delivered. Flexschlauch's liability under this warranty shall be limited to making good without charge by repair or replacement (at the discretion of Flexschlauch of any defects (not including damaged goods) of which Flexschlauch is satisfied are defects of material or workmanship and which are returned to Flexschlauch's premises as soon as possible after the Customer becomes aware of the defects (and in any event within twelve (12) calendar months after the date of delivery).

**b)** The foregoing is Flexschlauch's sole warranty and Customer's exclusive remedy for breach of the foregoing warranty, and all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

**c)** Notwithstanding anything to the contrary in the contract between Flexschlauch and the Customer:

**I)** Flexschlauch's total liability (including any liability for the acts and omissions of its employees and agents) in contract, tort (including negligence or breach of statutory duty), misrepresentation, and any indemnification or warranty obligations, or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited to the price paid by the Customer for the goods; and

**II)** Flexschlauch shall not be liable to the Customer for (A) any loss of profits, business revenue, business opportunity, contracts, goodwill, and /or anticipated savings; or (B) indirect, incidental, special, exemplary, punitive, or consequential loss or damage of any kind whatsoever (including, for the avoidance of doubt, where such loss or damage is of the type specified in (A) above), which arises out of or in connection with the contract.

**III)** All claims of the Customer (including indemnification claims) must be made within one (1) year of expiration or termination of the contract.

**d)** The liability stipulated in this Article. 6 shall be the only compensation required and shall constitute full compensation.

**e)** The complete or partial invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions hereof.

**f)** The rights of the Customer vis-à-vis Flexschlauch shall lapse and the Customer shall be liable for all damage and shall indemnify Flexschlauch against any claims by third parties in respect of the payment of damages if and to the extent that:

**I)** the aforesaid damage was caused by the Customer's lack of expertise in the use and/or installation and/or storage of the goods items and/or failure to use the goods according to Flexschlauch's instructions;

**II)** the aforesaid damage was caused by the Customer's failure to follow Flexschlauch's instructions and/or recommendations;

**III)** the aforesaid damage was due to mistakes/defects/inaccuracies in data, materials, information, carriers and suchlike that were provided to Flexschlauch by or on behalf of the Customer and/or that were prescribed by or on behalf of the Customer; or

**IV)** the aforesaid damage was the result of repairs or other adaptations/activities carried out on the delivered items either by the Customer or a third party acting on its orders, without the prior written permission of Flexschlauch.

## **Art. 7 Information on the right of revocation**

**(1)** When concluding a telesales transaction, consumers basically have a statutory right of revocation, about which Flexschlauch is providing information below, in accordance with the statutory sample. The exceptions to the right of revocation are regulated in paragraph **(2)**. In paragraph **(3)** you will find a sample revocation form.

### Right of revocation

You are entitled to revoke this agreement within fourteen days without giving reasons.

The revocation deadline amounts to fourteen (14) days as from the day when you or a third party named by you, who is not the carrier, are/is in physical possession of the goods ordered by you.

In order to exercise your right of revocation, you will need to notify us

### **Flexschlauch Produktions GmbH**

Reepschlägerstraße 10b  
D-23556 Lübeck

Tel.: +49 (451) 899 94 01

Fax: +49 (451) 899 94 40

E-mail: [info@flexschlauch-luebeck.de](mailto:info@flexschlauch-luebeck.de)

of your decision to revoke this agreement by means of an unambiguous declaration of intent (e.g. by letter sent through the post, telephone, telefax or e-mail). You may use the attached sample revocation form for that purpose. It is not, however, mandatory to do so.

The revocation deadline shall be deemed to have been met if you despatch the notification on your exercising your right of revocation prior to expiry of the revocation deadline.

### Consequences of revocation

Should you revoke this agreement, we are obliged to refund you any payments that we have received from you, including the delivery charges (with the exception of any additional costs arising from your having selected an alternative type of delivery to the cost-effective standard delivery offered by us), without delay and at the latest within fourteen days as from the day on which we receive the notification about your revocation of this agreement. We shall use the same method of payment for said refund that you used for the original sales transaction, unless anything to the contrary has explicitly been agreed with you. We will never charge you any fees for making such a refund.

We reserve the right to only refund the money once we have received the goods back or once you have provided evidence that you have despatched the goods, depending on which point in time is earlier.

You will need to send or hand the goods back, without delay, in any event no later than within fourteen days of the day on which you inform us about the revocation of this agreement. The deadline shall be deemed to have been met if you despatch the goods prior to expiry of said 14- day period.

You will need to bear the direct costs of returning the goods.

You will only need to make good any loss in value of the goods if such loss in value is attributable to your handling the goods in a manner that is not necessary to test the quality, properties and functioning of the goods.

**(2)** The right of revocation does not exist for contracts to deliver goods that are not ready-made and for the manufacture of which an individual selection or stipulation by the consumer is relevant or which are clearly tailored to the Consumer's personal requirements.

**(3)** Flexschlauch is providing the following information on the sample revocation form, in accordance with the statutory provision:

### Sample revocation form

(If you wish to revoke the agreement, please fill in this form and return it to us.)

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To

Flexschlauch Produktions GmbH  
Reepschlägerstraße 10b  
D-23556 Lübeck

Tel.: +49 (451) 899 94 01  
Fax: +49 (451) 899 94 40  
E-Mail: [info@flexschlauch-luebeck.de](mailto:info@flexschlauch-luebeck.de)

I / We(\*) hereby revoke the contract concluded by me / us(\*) on the purchase of the following goods(\*) / the provision of the following service (\*):

\_\_\_\_\_

Ordered on (\*)/Received on (\*):

\_\_\_\_\_

Name of the consumer(s)

\_\_\_\_\_

\_\_\_\_\_

Address of the consumer(s)

\_\_\_\_\_

\_\_\_\_\_

Signature of the consumer(s) and date (only in the case of a communication submitted in paper form):

\_\_\_\_\_

(\*) Please delete where inapplicable.

\*\*\*\*\*

### **Art. 8 Platform for settling disputes online**

(1) The European Commission provides a platform for online settlement of disputes, which can be found at <http://ec.europa.eu/consumers/odr/>. We would prefer to clarify your concern by communicating with you directly, and therefore do not take part in any consumer arbitration proceedings. Please contact us directly if you have any questions or in the event of any problems arising.

### **Art. 9 Final provisions**

(1) The law of the Federal Republic of Germany shall apply to any agreements between Flexschlauch and the Customer, subject to exclusion of the UN Convention on the Contract for the International Sale of Goods. The statutory provisions on the limitation of the choice of law and on the applicability of mandatory regulations, in particular of the country in which the Customer, as a consumer, has his or her usual place of residence, shall not be affected thereby.

### **Art. 10 Miscellaneous provisions**

(1) Even if individual clauses are legally invalid, the remainder of the agreement shall remain binding. Any statutory provisions which may exist shall replace the invalid clauses. Should the latter, however, constitute undue hardship for either contracting party, the agreement shall become invalid in its entirety.

(2) Any documents, drawings and cost estimates shall be subject to Flexschlauch's rights of ownership and copyrights, and the latter may only be made accessible to third parties after obtaining Flexschlauch's prior consent.

(3) Any alterations or additions to these General Terms and Conditions of Business shall require to be effected in writing in order to be legally valid.

## **C. General Contractual Conditions vis-à-vis traders**

### **Art. 1 Delivery, availability of goods**

(1) In regard to traders, by way of derogation from "B., Art. 2", the following provisions shall apply: The risk of accidental loss and accidental impairment of the goods shall pass to the Customer at the latest upon the goods being handed over. In the case of goods being shipped to a place other than the place of fulfilment, the risk of accidental loss or impairment of the goods, as well as the risk of delay, shall, however, already pass to the forwarding agent, the freight forwarder or any other person or institution appointed for effecting the shipping upon the goods being handed over. Flexschlauch shall determine the mode of shipment and shipment route, and shall be entitled, but not obliged, to insure the consignment at the customer's expense. Should it be impossible to ship the goods, without any fault on the part of Flexschlauch, the risk shall pass to the Customer upon readiness for dispatch being notified. The place of fulfilment is, in any event, Lübeck. Flexschlauch shall be entitled to make partial deliveries, and may, in the case of non-standard equipment or specially-designed goods, deliver an extra quantity, if justified (up to 10% in the case of assembled goods), as long as that is reasonable for the Customer.

(2) Delivery dates and deadlines shall be binding vis-à-vis companies, and shall apply subject to correct and timely delivery to us by our own suppliers, unless anything to the contrary has been agreed in writing. Delivery deadlines shall commence upon the agreement being concluded, and shall be subject to timely receipt of any documents to be provided by the Customer, any permits or approvals necessary, the plans being clarified and approved in good time, adherence to the agreed terms of payment and any other obligations. Should any contractual amendments be subsequently agreed, a new delivery date or deadline is simultaneously to be agreed.

(3) Should no copies of the product selected by the Customer be available as at the date of the order being placed, Flexschlauch shall inform the Customer about it without delay in the order confirmation. Should the product be permanently unavailable, Flexschlauch shall refrain from issuing a declaration of acceptance. In this case, no agreement shall materialise.

(4) By way of derogation from "B. Art. 2", the following shall apply to traders in addition: should the product designated by the Customer in the order only be temporarily unavailable, Flexschlauch shall likewise inform the Customer of this without delay in the order confirmation. Should there be a delay in delivery of more than two weeks, the Customer shall be entitled to withdraw from the contract. In addition, Flexschlauch shall also, in this case, be entitled to withdraw from the contract. In this respect, it may reimburse any payments already made by the Customer without delay.

(5) Flexschlauch shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to Flexschlauch's other production requirements or plant conditions, to strike, differences with workmen, lockout, or any labor shortage or difficulty, to fire, flood, accident, quarantine restrictions, earthquake, tornado, disease outbreak, public health crisis, epidemic, pandemic or other casualty or act of God, to war, riot, civil disobedience or other emergency or acts of civil or military authorities, to compliance with orders, priorities regulations or requests of any governmental agencies, to embargoes, failure of Flexschlauch's suppliers to meet delivery schedules or any shortage of raw materials howsoever caused, to inability or delay in obtaining labor or materials, to inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation, to delay in Flexschlauch's Credit Department receiving information upon which its approval of Customer or the Customer Agreement is based, or to cause, condition, or contingency beyond the reasonable control of Flexschlauch. In the event of any of the foregoing, Flexschlauch may apportion its production and all stock material among its customers in such manner as it may consider equitable and extend the time of performance by the period of such delay. Further, if Flexschlauch's supplier pricing goes up due to a Force Majeure event, Flexschlauch may pass that cost to Customer. The Parties agree to either (I) adjust the price(s) in the Customer Agreement during the period of Force Majeure for performance to continue; or (II) delay the performance until the price(s) return to normal. If the price(s) never come back down, then the change in cost will be adjusted in the Customer Agreement going forward and paid by the Customer once performance resumes.

### **Art. 2 Reservation of ownership**

(1) By way of derogation from "B. Art. 3", the following provisions shall also apply to traders: the contractual item(s) shall remain the property of Flexschlauch until such time as any receivables owed to Flexschlauch by the Customer arising from the purchase agreement have been settled. This reservation of ownership shall also remain in force for any receivables owed to Flexschlauch by the Customer based on any other legal transactions arising from the ongoing business relationship, in particular due to repairs or deliveries of spare parts, and shall also extend to the outstanding balance, in so far as receivables owed by the Customer are accounted for based on an open account.

(2) Should the Customer engage in any conduct that is contrary to contract, in particular fail to make payment of the purchase price due, Flexschlauch may request the return of the goods subject to reservation of ownership. The taking back of the goods by Flexschlauch shall not constitute any withdrawal from the contract, unless the latter is explicitly stated or stipulated by law. Distraint of the goods by Flexschlauch shall always constitute withdrawal from the contract, unless the latter is explicitly stated in writing or stipulated by law. Should the purchaser fail to make payment of the purchase price due, we may only assert such rights if we have previously set the purchaser a reasonable deadline for payment or the setting of such a deadline may be dispensed with in accordance with the statutory provisions. A levy of execution of the goods shall always constitute withdrawal from the contract. Flexschlauch shall be entitled to assert the rights arising from the reservation of ownership itself, and without making use of any judicial assistance. The Customer in particular authorises Flexschlauch to take away the contractual item(s). The Customer shall bear any costs associated with taking the goods back and utilising them. The costs of utilisation shall, without proof, amount to 5% of the proceeds of utilisation.

**(3)** The Customer shall be entitled to sell on the goods subject to reservation of ownership in the orderly course of business. He or she already at this point assigns to Flexschlauch all receivables which may accrue to it from its customers or third parties from selling on the goods in the sum of the amount invoiced (including VAT), and in fact independently of whether the contractual item has been sold on without processing or after processing. The Customer is revocably authorised to collect such claims on behalf of Flexschlauch. Flexschlauch's authorisation to collect the receivables itself shall not be affected thereby. Flexschlauch, however, undertakes to disclose the claims and provide any details required for collection, and in particular to hand over the associated documentation and inform the debtors (third parties) about the assignment.

**(4)** Should the contractual item(s) be inseparably mixed with items not belonging to Flexschlauch, Flexschlauch shall acquire co-ownership in the new item in the proportion of the value of the contractual item(s) to the other items mixed with it / them as at the date of mixing. Should the mixing have been carried out in such a way that the Customer's item is to be deemed the main item, it shall be deemed to have been agreed that the Customer assigns Flexschlauch proportionate co-ownership. The Customer shall keep the solely or jointly owned property safe for Flexschlauch.

**(5)** The Customer shall not be entitled to pledge the goods subject to retention of title to a third party or assign them by way of collateral. In the event of any access by third parties, in particular in the case of the contractual item(s) being seized, the Customer shall be required to inform Flexschlauch in writing without delay, as well as indicate the reservation of ownership in favour of Flexschlauch to said third party without delay. Should the third party not be in a position to reimburse Flexschlauch the judicial and extra-judicial expenses of an action pursuant to Sec. 771 German Code on Civil Procedure (ZPO), the Customer shall be liable for any losses incurred by Flexschlauch.

**(6)** Flexschlauch shall release the collateral that it is entitled to retain once the value of it exceeds the total amount of any outstanding claims to be collateralised by over 10%.

### **Art. 3 Prices and Shipping and Handling Charges**

**(1)** By way of derogation from the provision specified in "B. Art. 4(1)", the following shall apply in regard to traders: all prices agreed vis-à-vis traders shall be deemed net prices, net of VAT, cash discounts, packaging, freight and insurance. In the case of any other goods, especially specially-designed goods, the price agreed in the order confirmation shall apply, with the proviso that Flexschlauch shall be entitled to increase the price in line with the increase in costs between the time of the contract being concluded and delivery.

**(2)** Material Cost Changes. In the event the cost for any raw materials (e.g.; Titanium, Aluminum, etc.) increase by 3% from the price used to quote, Flexschlauch may request an equitable adjustment to the prices. Flexschlauch must make the request for the price adjustment in writing and the changes to the prices must be documented in writing.

### **Art. 4 Payment arrangements**

**(1)** By way of derogation, upon the expiry of the payment deadline specified in "B. Art. 5" an interest rate for arrears in the amount of 9% above the respective base rate of the European Central Bank (ECB) shall apply to traders.

**(2)** By way of derogation from "B. Art. 5", the following shall in addition apply to traders: Should partial payments have been agreed, if the Customer falls into arrears with at least two consecutive partial payments, in whole or in part, the entire residual debt shall be due - without taking into account the due date of any bill of exchange - including any interest accrued by the due date. The entire residual debt shall, moreover, be due if a cheque is not redeemed, the Customer generally ceases to pay or composition or insolvency proceedings are instituted over its assets.

**(3)** By way of derogation from "B. Art. 5", the following shall in addition apply to traders: should Flexschlauch become aware of any specific circumstances forming part of the Customer's economic circumstances after the contract has been concluded, due to which the receivables no longer appear, from the perspective of a reasonable commercial assessment, to be sufficiently secured, Flexschlauch may require advance payment or an appropriate amount of collateral. The provision of collateral and the advance payment shall then form part of the Customer's principal obligations.

### **Art. 5 General Liabilities**

**a)** Flexschlauch hereby warrants that all goods supplied are free from defects in material and workmanship that existed when the goods were delivered for a period of twelve (12) calendar months. Flexschlauch's liability under this warranty shall be limited to making good without charge by repair or replacement (at the discretion of Flexschlauch of any defects (not including damaged goods) of which Flexschlauch is satisfied are defects of material or workmanship and which are returned to Flexschlauch's premises as soon as possible after the Customer becomes aware of the defects after the date of delivery). Notification of the defect should be expressed in writing by the Customer to Flexschlauch no later than two weeks following the date of delivery.

**b)** The foregoing is Flexschlauch's sole warranty and Customer's exclusive remedy for breach of the foregoing warranty, and all warranties, conditions, and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

**c)** Notwithstanding anything to the contrary in the contract between Flexschlauch and the Customer:

**l)** Flexschlauch's total liability (including any liability for the acts and omissions of its employees and agents) in contract, tort (including negligence or breach of statutory duty), misrepresentation, and any indemnification or warranty obligations, or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited to the price paid by the Customer for the goods; and

**II)** Flexschlauch shall not be liable to the Customer for (A) any loss of profits, business revenue, business opportunity, contracts, goodwill, and /or anticipated savings; or (B) indirect, incidental, special, exemplary, punitive, or consequential loss or damage of any kind whatsoever (including, for the avoidance of doubt, where such loss or damage is of the type specified in (A) above), which arises out of or in connection with the contract.

**III)** All claims of the Customer (including indemnification claims) must be made within one (1) year of expiration or termination of the contract.

**d)** The liability stipulated in this Article. 5 shall be the only compensation required and shall constitute full compensation.

**e)** The complete or partial invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of such provision for any other purpose or the remaining provisions hereof.

**f)** The rights of the Customer vis-à-vis Flexschlauch shall lapse and the Customer shall be liable for all damage and shall indemnify Flexschlauch against any claims by third parties in respect of the payment of damages if and to the extent that:

**I)** the aforesaid damage was caused by the Customer's lack of expertise in the use and/or installation and/or storage of the goods items and/or failure to use the goods according to Flexschlauch's instructions;

**II)** the aforesaid damage was caused by the Customer's failure to follow Flexschlauch's instructions and/or recommendations;

**III)** the aforesaid damage was due to mistakes/defects/inaccuracies in data, materials, information, carriers and suchlike that were provided to Flexschlauch by or on behalf of the Customer and/or that were prescribed by or on behalf of the Customer; or

**IV)** the aforesaid damage was the result of repairs or other adaptations/activities carried out on the delivered items either by the Customer or a third party acting on its orders, without the prior written permission of Flexschlauch.

## **Art. 6 Place of jurisdiction**

**(1)** Should the Customer be a trader, a legal person under public law or a special fund governed by public law, the place of jurisdiction for any disputes arising from contractual relationships between the Customer and Flexschlauch shall be Lübeck.

## **Art. 7 Test components, tools, moulds**

**(1)** In addition, the following provision shall apply to companies: The preparation of test components, including the costs of moulds and tools, shall be borne by the Customer.

**(2)** In addition, the following provision shall apply to companies: Moulds, tools and models shall remain the property of Flexschlauch, even if the Customer has paid the costs, which always constitute only shares in the costs.