

## **General Terms and Conditions** (Last edited on 25 June 2018)

### **1. Preface**

a) The following General Terms and Conditions (GTC) are an integral part of all agreements (both in written and electronic form) with *ARGE Neue Medien der deutschen SHK-Industrie e. V., Technologiepark 12, 33100 Paderborn*, represented by the Chairman of the Board, Mr Frank Wiehmeier (hereinafter referred to as ARGE) that are concluded via the [www.synomax.com](http://www.synomax.com) portal.

b) Diverging GTC of domestic and international contractual partners shall not constitute an integral part of the contract. Collateral agreements and other deviations from our agreements, licence conditions or these GTC must be made in writing.

#### c) Services

The ARGE is an association of more than 100 renowned manufacturers from the HVAC industry and the leading B2B service provider in the sector.

On behalf of the industry, the ARGE operates [www.synomax.com](http://www.synomax.com), the central Internet platform of the trade. Here HVAC professionals can find data, information, and documents related to the manufacturers' products.

In all areas of the portal, industrial enterprises have the possibility to proactively make information available to their market partners.

The portal provides the registered user with a multitude of data for downloading. These include article master data, image data, and bathroom planning data made available by the manufacturers.

### **2. Terms and definitions**

#### a) Users:

Users are visitors and users of SYNOMAX, in particular wholesalers, craftsmen and other market players from the HVAC industry, seeking information and documents regarding the products of the HVAC manufacturers.

#### b) Manufacturers:

Manufacturers are those users of SYNOMAX who make information on their products available to their market partners on the platform. The offer of using the platform is limited to companies.

### **3. Conclusion of contract**

#### a) Manufacturers

aa) The manufacturer has the possibility to create their own profile on the platform free of charge and to make data related to their products available to the users. With the free registration, a contractual relationship regarding the use (usage agreement) is established between the ARGE and the registered manufacturer. Manufacturers shall not be entitled to the execution of a usage agreement. Input errors may be corrected before submitting the registration by using the usual keypad- and mouse functions. By clicking on the button that completed the registration, the manufacturer submits a legally binding offer of contract. Once the manufacturer's offer has been received by the ARGE, the contract shall be accepted by activating the manufacturer's account. With the registration, the manufacturer acknowledges the GTC and the Data Protection Regulations of the ARGE. Upon receipt of the manufacturer's binding registration request by the ARGE, the manufacturer shall receive an email that confirms receipt of said registration request.

bb) The manufacturer must provide complete and accurate information as required on the registration form, insofar as these data are not marked as optional information. Under the personal name query, giving a nom de plume, pseudonym or other invented name is prohibited. Should the data obtained change after registration, the manufacturer shall be obliged to immediately update their profile accordingly or to otherwise transmit such data to the ARGE.

cc) The manufacturer has to keep their password confidential and access to their account secure. The manufacturer shall be obliged to inform the ARGE immediately if there is evidence that an account has been misused by third parties.

#### b) Users

aa) The user has the possibility to create their own profile on the platform free of charge and to view the data made available by the manufacturers. With the free registration, a contractual relationship regarding the use (usage agreement) is established between the ARGE and the registered user. Users shall not be entitled to the execution of a usage agreement. Input errors may be corrected before submitting the registration by using the usual keypad- and mouse functions. By clicking on the button that completed the registration, the user submits a legally binding offer of contract. Once the user's offer has been received by the ARGE, the contract shall be accepted by activating the user's account. With the registration, the user acknowledges the GTC and the Data Protection Regulations of the ARGE. Upon receipt of the

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cc) The user has to keep their password confidential and access to their account secure. The user shall be obliged to inform the ARGE immediately if there is evidence that an account has been misused by third parties.

#### **4. Copyright and right of use**

a) The exclusive copyright and right of use for any published objects created by the ARGE (Internet pages, scripts, programs, graphics) remains the property of the ARGE.

b) The exclusive copyright and right of use for any published objects, documents, products, and uploaded images created by the manufacturers remains the property of the manufacturers.

c) Upon conclusion of contract through the portal, the manufacturer shall be granted a simple right unrestricted in space to use the portal to the extent stipulated in the contract exclusively for own purposes for the duration of the contract. More extensive rights, in particular to reproduction beyond what is necessary for the usage contractually agreed upon, are not granted.

#### **5. Presentation of the manufacturers' offers, responsibility**

a) ARGE shall take care of the technical integration for presentation in the platform of the manufacturers' products, documents, etc. ARGE shall make the technical implementation available to the manufacturer.

b) The manufacturer has the possibility to present their product range in their account.

c) ARGE only provides the manufacturer- and user data so that the user may gather information on the manufacturer's offer. The ARGE does not assume liability for the correctness of the data entered by the manufacturer or for the reachability of the manufacturer by means of these data. ARGE only transmits the data. There is no review of the data.

d) The manufacturer has to make sure that the contents submitted by them (presentation text, product descriptions, image material, etc.) are completely free from third-party rights, and that they are suitable for these usages from a legal point of view and may be made available.

e) The manufacturer shall indemnify the ARGE from any claims, including claims for damages, made by third parties against the ARGE and arising from an infringement of said third parties' rights in the form of the contents uploaded by the manufacturer to the ARGE portal. The manufacturer shall bear all reasonable costs incurred by the ARGE arising from the infringement of said third-party rights, including all reasonable legal costs incurred. Any more extensive rights and claims for damages made by the ARGE shall remain unaffected.

f) The ARGE may check the presentation (any text entries and illustrations) or have it checked for admissibility at any time. Should the ARGE suspect that the presentation infringes the GTC, the business policy of the platform (in particular the stipulations of these GTC), legal regulations or any third-party rights, the ARGE may remove the presentation in question from the platform at any time, without stating a reason; this removal shall not entail any obligation for the ARGE.

g) The ARGE has the right to technologically process, edit and adapt manufacturers' offers and contents in such a way that they can also be displayed on mobile devices and in third-party software applications.

h) The manufacturer shall be obliged to describe their offer in a truthful manner; they shall be liable for compliance with relevant information- and labelling obligations and possible required approvals regarding their offer.

## **6. Obligations**

a) The manufacturer/user declares that they conduct a commercial business or that they act as tradesmen in legal intercourse and/or that they are treated as such (e.g. freelancers). Evidence may be provided upon the ARGE's request by stating the value added tax identification number. Private individuals are excluded from commerce on the platform in the role of manufacturer/user.

b) Manufacturer/users may use the addresses, contact details and other personal data obtained by using the platform only for the purposes of contractual and precontractual communication and for the contractual purposes in question. Reselling these data or using them for the sending of advertising material is specifically forbidden, unless the manufacturer/user in question has explicitly agreed to this beforehand.

## **7. Liability**

a) The ARGE shall not accept any liability towards the manufacturer/user for damages to legally protected goods other than life, limb or health, unless such damages are due to wilful intent or gross negligence of the ARGE, one of its statutory representatives or one of its vicarious agents, or such behaviour constitutes an infringement of fundamental contractual obligations. Fundamental contractual obligations are obligations that need to be fulfilled for the contract to be executed properly and on the fulfilment of which the manufacturer/user may normally rely on. The aforementioned exclusions and limitations of liability shall not apply in the case of explicit guarantees assumed by the ARGE, in the event of claims arising from missing guaranteed characteristics, or insofar as claims under [German] product liability law are concerned.

b) As regards the recovery of data, the ARGE shall only assume liability if the manufacturer/user has taken all necessary and reasonable data back-up and security precautions and has made sure that the data can be recovered at reasonable expense from data material kept in machine-readable form.

c) In the browser (viewing software for Internet pages), the user/viewer has various individual settings at their disposal that may alter the presentation format of the pages. Also, the different browsers may interpret the source code differently which may lead to different display modes. Therefore, the ARGE shall not assume any guarantee or warranty for the entirely identical presentation of the HTML documents in all browsers.

d) The ARGE endeavours to provide access to the service 24 hours a day, seven days a week. However, temporary service interruptions due to common maintenance work, Internet malfunctions at third-party providers or third-party network operators and in the event of force majeure may occur. Therefore, there is no claim to continuous and permanent accessibility of the platform.

## **8. Termination of the usage agreement**

a) The usage agreement may be terminated at any time by deactivating the membership account.

b) The contractual parties' right to termination for good cause without notice shall remain unaffected. A good cause exists if one contractual party grossly infringes the obligations explicitly stipulated in this agreement. The termination has to be submitted in writing.

## **9. Secrecy**

a) The contractual parties commit to treat any trade- and business secrets obtained by them or their vicarious agents in the course of contract negotiations or -fulfilment as strictly confidential. This obligation to secrecy shall not apply to information, know-how and experiences that

aa) are demonstrably public knowledge without infringing this obligation to secrecy;

bb) the parties had demonstrably already been aware of before obtaining the information, know-how and experiences in question;

cc) have been obtained from a third party without obligation to secrecy; or

dd) have demonstrably been developed independently.

## **10. General information**

a) This agreement is subject to German law only. The contract language is German.

b) The place of jurisdiction for this agreement is Paderborn.

c) Should individual provisions of this contract be invalid or lose their effectiveness due to circumstances arising at a later date, the effectiveness of the contract shall remain otherwise unaffected.