

## A. Product Business

### 1. Validity / conclusion

- 1.1 Our offers shall be non-binding, unless otherwise specified. All agreements, especially as far as they change these Conditions, shall become binding only upon our written confirmation. Purchaser's deviating terms of business shall not be binding for us if we do not object to them. Any objection to our order confirmation shall be effected immediately; at the latest, within 8 days.
- 1.2 Our Terms and Conditions of Delivery shall also apply to all future orders by Purchaser, irrespective of whether reference is made to them in every individual case.

### 2. Prices, payments, securities, offsetting

- 2.1 Prices shall be valid as of the supplier plant at the point in time of the delivery, unless otherwise specified, excluding ancillary freight, customs, import charges, and packaging, plus value-added tax in its respectively statutory amount.
- 2.2 Payments shall be made within 30 days after receipt of the invoice, without any deductions. If payment is made within ten days, a 2 % discount may be deducted from the invoice value. Payments by checks and bills of exchange – which we are not obligated to accept – shall only be considered made upon irrevocable crediting to our bank account. A written agreement shall be required regarding any further arrangements about other terms of payment.
- 2.3 If Purchaser is in arrears with payment, he/she shall pay interest in the statutory amount from the beginning of default. We may claim higher default damage.
- 2.4 Offsetting, retention and refusal of performance shall only be permitted as far as legally enforceable counterclaims or objections are concerned or those recognized by us.
- 2.5 We reserve the right to correspondingly adjust prices if, until the date of delivery, any changes in the price basis occur; for example, due to price increases of raw materials or wage increases.
- 2.6 We shall be entitled to demand, at any time, adequate securities for our receivables. Irrespective of the term of possibly collected bills or granted payment terms, all our receivables shall fall due immediately if Purchaser does not meet his/her contractual obligations or if circumstances become known which are of a nature to reduce Purchaser's credit worthiness. This shall apply, in particular, in case of bills/check protests, moratoriums, applications for composition or bankruptcy proceedings.

### 3. Delivery periods, delivery dates and delivery delays

- 3.1 The delivery period shall begin with the date of the order confirmation; however, not before the provision of documents, permits, releases to be procured by Purchaser or before the receipt of an agreed-upon down payment. The delivery period relates to the point in time of dispatch from the supplier plant and, upon the notice of readiness for shipment, shall be considered complied with if the goods cannot be dispatched on time due to no fault on our part.
- 3.2 The delivery period shall be extended by the duration of the impediment and a reasonable start-up period if we are prevented from meeting our obligations due to the onset of unexpected events concerning us or our suppliers and which we cannot ward off even with the reasonable care according to the circumstances of the case – e.g. war, intervention by higher authorities, internal unrest, forces of nature, accidents, other permanent operational disruptions or delays in the delivery of essential operating supplies or primary materials. If the delivery becomes impossible or unreasonable for us due to the impediment or if our supplier withdraws due to the impediment, we may withdraw from the contract; Purchaser shall have the same right if he/she can no longer be reasonably expected to accept the order due to the delay. Strikes or lockouts shall also be considered in any event an impediment beyond our control within the meaning of this paragraph.
- 3.3 Any right of rescission which we or Purchaser are entitled to according to Clause 3 shall principally extend only to the part of the contract not yet performed. Any partial performances already rendered shall be paid.
- 3.4 Excluded shall be any further rights; in particular, damage claims.
- 3.5 If Purchaser is in arrears with the provision of documents, permits or releases or agreed-upon down payments, we shall be entitled to withdraw from the contract and demand damages for non-performance in the amount of 10 % of the sum total of the order, irrespective of the assertion of the actual damage.

#### **4. Dispatch and passage of risk**

- 4.1 We shall be entitled to partial deliveries. Goods reported ready for dispatch must be called off immediately; otherwise, we shall be entitled to store them at our own discretion and at Purchaser's costs and risk, and bill them as delivered.
- 4.2 Risk shall pass to Purchaser in any event upon handing over the goods to the carrier, freight forwarder or if the goods had not been called off despite having been advised ready for dispatch; at the latest, however, upon the goods leaving the plant or the warehouse.
- 4.3 For lack of any special agreement, we shall be free to choose the type and route of transportation means with the exclusion of any liability.
- 4.4 Transport insurance shall only be concluded upon Purchaser's explicit request and at his/her costs.

#### **5. Weights, measures and documents**

- 5.1 Weights and measures in our offers, order confirmations, lists, drawings and other documents have been determined in the best possible way; however, Purchaser shall not be exempt from making any reviews.
- 5.2 Technical data are only approximate values; deviations of measures and weights shall be admissible, unless they exceed the customary extent or DIN tolerances. If billing is effected by meters, the indicated quantities or weights shall be non-binding.
- 5.3 We shall reserve ownership rights and copyrights in all documents, especially drawings, about the products offered or delivered by us. Without our special consent, they may only be used for the contractually stipulated purpose. They shall be returned upon request and may not be disclosed to third parties.

#### **6. Defects**

- 6.1 Obvious defects shall be notified immediately after receipt of the goods or termination of our service. Compliance with the deadline shall only require mailing the notification in good time. For our inspection, the deficient goods shall be kept available, unchanged, in the condition which they were in at the time of detection of the defect. In particular, the goods shall not be treated / processed. Purchaser shall give us the opportunity to verify that a notice of defects is justified. Purchaser shall also be obligated to provide us immediately, upon request, with samples of the objected to material. Breakage and shortfalls shall be noted on the bill of lading / delivery note. Any breach of these obligations shall exclude any liability for us. Furthermore, claims of defects can no longer be lodged if the defect was complained of only after mixing with other goods or after having been treated / processed.
- 6.2 With the release of drafts and sketches as being in accordance with the contract, the risk of any errors shall pass to Purchaser, unless errors are concerned which only developed with the production process following the release or could only then have been detected. The same shall apply for all other declarations of release by Purchaser regarding further manufacturing.
- 6.3 In case of a justified, on-time notice of defects, we shall take back goods found to be defective and deliver perfect goods instead or, at our option, remedy the defects by reworking. If subsequent performance fails, Purchaser shall explicitly be reserved the right to reduce the price or withdraw from the contract at his/her option.
- 6.4 The period of limitation for claims arising from defects shall be one year from delivery or from acceptance, as far as acceptance is required. This period shall not apply to Purchaser's damage claims resulting from injury to life, limb or health or from the seller's or his vicarious agents' deliberate or grossly negligent breaches of duty which respectively are statute-barred in accordance with statutory regulations.

## 7. Liability

We shall only be liable for damages which are based on a grossly negligent or deliberate breach of duty by us, our legal representatives or our vicarious agents, unless damages are concerned resulting from injury to life, limb or health. Unaffected shall remain the liability based on the provisions of the product liability law, for culpable breach of major contract obligations, for fraudulent deception and for guaranteed quality characteristics. In case of the breach of major contract obligations, liability shall be limited to the foreseeable, typically occurring damage.

## 8. Reservation of ownership

- 8.1 The delivered items shall remain our property (reserved goods) until the satisfaction of all claims; also in particular, the respective outstanding balances which we are entitled to from Purchaser for any legal reason whatsoever. This shall also apply if payments are made to specially designated receivables.
- 8.2 Any treatment and processing of the reserved goods shall occur for us as a manufacturer within the meaning of § 950 Civil Code (BGB), without obligating us. The processed goods shall be considered reserved goods within the meaning of Clause 8.1. Concerning the processing, combining and mixing of the reserved goods with other goods by Purchaser, we shall be entitled to co-ownership in the new item at the ratio of the invoice value of the reserved goods to the invoice value of the other utilized goods. If our ownership expires as a result of combining or mixing, Purchaser shall now already transfer to us the ownership rights – in the new asset or item to which he/she is entitled – to the extent of our invoice value of the reserved goods, and Purchaser shall keep them safely free of charge for us. The accordingly resulting co-ownership rights shall be deemed reserved goods within the meaning of Clause 8.
- 8.3 Purchaser shall take care of the safe and proper storage of the items owned or partly owned by us and insure them at his/her cost against theft, fire and other damages. Purchaser may only sell the reserved goods in customary business transactions, at his/her standard business conditions and as long as he/she is not in default, provided that the claims from resale shall pass over to us in accordance with the provisions of Clause 8.4. Purchaser shall not be entitled to any other disposals of the reserved goods. We shall be entitled to convince ourselves, at any time, of the compliance with this obligation and to demand the required evidence from Purchaser.
- 8.4 Purchaser's claims from the resale of the reserved goods shall now already be assigned to us. They shall serve as security to the same extent as the reserved goods. If Purchaser sells the reserved goods together with other goods not supplied by us, the assignment of the claim from resale shall only apply in the amount of our invoice value of the respectively sold reserved goods. Regarding the sale of goods in which we hold co-ownership shares, the assignment of the claim shall apply in the amount of these co-ownership shares. In this case, the part of the receivable not assigned by us shall first be repaid by means of payment made by the third-party debtor to Purchaser. Resale shall be equivalent to the installation into real properties or buildings or to the use of reserved goods for the performance of other contracts to produce works or work performance contracts by Client.
- 8.5 Purchaser shall be entitled to collect receivables from the sale until our revocation which is permissible at any time. We shall only use our right of revocation if we deem our receivable as jeopardized or if Purchaser does not meet his/her obligations to us. Under these prerequisites, we shall also be entitled to demand surrender of the reserved goods. A right of retention cannot be asserted against this claim of surrender. Purchaser shall hereby declare his/her consent that the persons authorized by us to pick up the goods may, for this purpose, enter and drive on the premises on which the goods are located. Assertion of the claim of surrender and the seizure of goods in our ownership or co-ownership shall not be regarded as withdrawal from the contract.
- 8.6 Purchaser shall not be entitled in any event to assign the receivable. Upon our demand, Purchaser shall be obligated to immediately inform his/her customers of the assignment to us – unless we do this ourselves – and provide us with the information and documents required for collection.
- 8.7 If the value of the existing security exceeds the secured claims overall by more than 20 %, we shall insofar be obligated, upon Purchaser's demand, to release securities at our option. Purchaser shall notify us without delay about any seizure or any other impairments by third parties. If the reservation of ownership or assignment is ineffective according to the law which is applicable where the goods are located, the security corresponding to the reservation of ownership or the assignment in this area shall be considered agreed upon. If Purchaser's cooperation is required according to this, he/she shall take all measures which are necessary for establishing and maintaining such rights.

- 8.8 As far as delivery items become essential components of a piece of real property, Purchaser shall allow us – upon non-compliance with agreed-upon payment dates – the dismantling of items which may be removed without major impairment of the building structure. Purchaser shall bear dismantling and other costs. For this purpose, Purchaser shall grant us, now already, the irrevocable right to enter the building and the premises. Should they be locked, Purchaser shall grant us the right to have them opened by a locksmith for the above mentioned purposes.
- 9. Protection of registered designs**
- 9.1 If we have to deliver according to drawings, models, samples or other information by Purchaser, he/she shall accept liability that, in so doing, we do not infringe any third-party property rights. Purchaser shall compensate for all damages which we incur due to such infringements of possible protective rights.
- 10. Place of performance, legal venue, applicable law**
- 10.1 Place of performance for our deliveries shall be the supplier plant, and Mücke-Atzenhain for Purchaser's payment obligation.
- 10.2 Gießen shall be the exclusive legal venue, also for check and bills of exchange proceedings.
- 10.3 The law of the Federal Republic of Germany shall exclusively apply for all legal relationships between us and Purchaser. Application of the UN Sales Law (CISG) shall be excluded.
- 11. Partial invalidity**
- 11.1 Should individual conditions of these or other contract conditions be invalid, the validity of the remaining conditions shall remain unaffected thereby.

## B. General Terms and Conditions for Contracts to Produce Works Regarding Systems of Hürner Luft- und Umwelttechnik

### I. Scope, offer, conclusion of contract

1. The contractual basis for this order shall be the
  - a) following General Terms and Conditions
  - b) Standard Building Contract Terms (VOB/B) in the version valid upon contract conclusion
  - c) provisions of the Civil Code about contracts to produce works and similar contracts (Sections (§§) 631 et seq.) in the version valid upon contract conclusion.

They shall be now already agreed upon for all future contractual relationships as well. Client's General Terms and Conditions shall apply only insofar as Contractor explicitly consented to them in writing or in electronic form. Contractor's silence regarding General Terms and Conditions transmitted by Client shall not be deemed to be consent.

2. For the contents of the contract, Contractor's order confirmation shall be decisive or – if this is not available – Contractor's offer. If Client accepts an offer by Contractor upon change or extension, this shall be considered a new offer by Client. Contractor shall then decide whether the new offer is rejected or accepted.
3. All documents which are part of the offer – as e.g. drawings, illustrations, information on weight and breakouts, etc. – shall be only approximately authoritative, unless explicitly designated as binding upon the Client's request.

All ownership rights and copyrights in the offer and all documents shall remain reserved. Without the provider's approval, the offer and documents shall neither be transmitted, published or duplicated, nor used for any other than the stipulated purpose.

4. The offer shall be submitted on the prerequisite that
  - a) the media (water, air, etc.) used for the operation of the system are not aggressive;
  - b) no hazardous materials – within the meaning of the Ordinance on Hazardous Materials – occur or are to be disposed of upon execution of the work which are not explicitly specified according to type and extent in the specifications.

### II. Construction documents and official permits

Client shall procure on time, at its costs, the permits required for the system's implementation and operation. If Contractor helps Client with it, Client shall also bear the costs incurred thereby.

### III. Prices and payments

1. Prices of the offer shall only be valid if the entire system offered is ordered.
2. Contract prices shall be understood plus the statutory value-added tax.
3. All secondary work (e.g. masonry, chiselling work, plaster work, carpentry, earthworks, electrical work, paintwork) shall not be included in the offer, unless they are separately listed in items with quantities and prices. If they are executed by Contractor, they shall be separately remunerated.
4. Installations which are additionally executed or repeated – for reasons which Client is responsible for – shall be separately remunerated.
5. If the installation is interrupted for reasons which Client is responsible for, the additional costs incurred thereby shall be billed to Client.
6. The order shall be billed at the agreed-upon unit prices on the basis of a site measurement, unless another remuneration is explicitly agreed upon.

7. Progress payments shall be granted upon application at the shortest possible time intervals or at the stipulated points in time, and in the amount of the value of the respectively verifiable contractual services, including the stated amount of value-added tax incurred for it. The services shall be verified by an auditable itemization. The itemization shall enable a swift and reliable assessment of the services.

Progress payments shall be due and payable within 21 calendar days after receipt of the itemization.

8. The final payment shall be due and payable within 30 calendar days after receipt of the final invoice.

#### **IV. Reservation of ownership**

1. Objects delivered by Contractor which are part of the installation service owed by Contractor (reserved goods) shall remain the Contractor's property until payment has been effected irrevocably, unconditionally and in full. The reservation of ownership shall also apply in terms of any future claims by Contractor against the Client in connection with the business relationship. As long as the reservation of ownership exists, Client shall not be entitled to burden the delivered object with a security interest (e.g. ownership by way of security, lien, mortgage, land charge, etc.), or to sell it further.
2. If the reservation of ownership expires – especially due to resale, combining, processing, etc. – the reservation of ownership shall be superseded by the new item or the Client's claim arising thereby against a third party. Client shall remain authorized to collect the receivable to which Contractor's extended reservation of ownership refers, as long as Client is not in default of payment vis-à-vis Contractor. Concerning the processing, restructuring, combining and mixing of the reserved goods with other goods, Contractor shall be entitled to ownership in the new item at the ratio of the invoice value of the reserved goods to the invoice value of the other item resulting due to processing, restructuring, combining or mixing.
3. In order to secure the receivables of Contractor against Client, Client shall assign to Contractor all receivables and claims which arise to Client due to the connection of the delivered object with a piece of real property against a third party. Contractor shall now already accept this assignment.
4. If the value of the securities – serving the Contractor due to the reservation of ownership and the extended reservation of ownership – exceeds the Contractor's receivables vis-à-vis the Client by more than 20 %, Contractor shall release securities, upon the Client's demand, as far as there is excessive security. Contractor shall be responsible for the selection of securities to be released.
5. If Client acts in violation of the contract – in particular, in case of improper treatment of the delivered object or upon Client's default in payment – Contractor shall be entitled to reclaim the delivered object after prior notice. Reclaiming the object shall not constitute any rescission of the contract, unless Contractor explicitly declared to exercise the right of rescission. After reclaiming the delivered object, Contractor shall be entitled to its realization; the realization proceeds shall be offset against the Client's liabilities – minus reasonable costs of the realization.
6. Until Contractor's full satisfaction of all claims, Client shall insure the delivery object at its costs against the risk of loss or deterioration.

In case of third-party interferences with Contractor's rights, Client shall immediately notify Contractor thereof and provide Contractor with all the required information.

## **V. Installation, execution period and obligations to provide information for welding work**

1. Execution periods shall be agreed upon in good time. Prerequisite for the beginning of installation shall be that the construction work has progressed so far that installations may proceed unhindered.

The execution period shall begin only upon the final determination of all commercial and technical prerequisites for the execution of the system and not before Client's provision of the permits to be procured according to No. II, and also not before the receipt of a possibly agreed-upon down payment.

2. If cutting, welding, defrosting and/ or soldering work is required, Contractor shall notify Client of the associated hazards. Client shall be obligated to draw the Contractor's attention to possible hazards (e.g. fire hazards in rooms or of materials) and to take all safety measures (e.g. posting fire guards, fire extinguishing materials, etc.).
3. If work is to be continued in particularly unfavourable weather conditions, it shall be the Client's responsibility to provide the prerequisites for continuation of the work.

## **VI. Acceptance and risk assumption**

1. Contractor shall bear the risk until acceptance of the system. However, if the system is damaged or destroyed prior to acceptance due to force majeure or other objectively unavoidable circumstances for which Contractor is not responsible, Contractor shall be entitled to payment of the work executed so far, as well as the other costs incurred which are included in the contract prices of the non-executed part of the service.

Client shall also bear the risk prior to the acceptance of the system if he/she delays acceptance or if the installation is interrupted for reasons which Client is responsible for, and if Contractor amicably and explicitly placed the system established until then into Client's custody.

2. After completion of the service, the system established by Contractor shall be accepted even if, at that point in time, there has only been a preliminary adjustment of the system.

Upon request, self-contained parts of the performance shall be specifically accepted. Any use of the system prior to acceptance may only be effected upon the Contractor's explicit consent.

Incidentally, Section (§) 12 of the Standard Building Contract Terms (VOB/B) or Section (§) 644 of the Civil Code (BGB) shall apply in the version valid upon contract conclusion.

3. During trial commissioning, Client's operating personnel shall be instructed by Contractor in the operation of the system.

## **VII. Claims for defects**

Client's rights shall result from Section (§) 13 of the Standard Building Contract Terms (VOB/B) or pursuant to Sections (§§) 642 et seq. of the Civil Code (BGB).

## **VIII. Client's obligations to cooperate**

1. Client shall support Contractor's installation personnel in the execution of their work.
2. Client shall be obligated to draw Contractor's attention to special statutory, official and other regulations at the place of installation which are related to the implementation of the work. Client shall provide for the official permits so that unhindered work performance may be effected. This shall apply, in particular, for special permits and for special hazardous situations. Client shall bear the risk of a delay or refusal of these permits.
3. Client shall be responsible for instructing Contractor in writing about existing safety regulations at the place of installation and for carrying out safety instructions of the Contractor's installation personnel prior to the beginning of work on location. If these safety regulations provide for special protective equipment for the installation personnel, such equipment shall be made available to the Contractor's installation personnel.

4. Without the Contractor's explicit written consent, Client shall not be authorized to use Contractor's personnel for work which is not the subject matter of the contract. Contractor shall not accept any liability for work which is done without the Contractor's special instruction upon the Client's order.
5. Contractor shall invoice to Client the full amount of all costs which the Contractor incurred, directly or indirectly, due to the stoppage or interruption of the work for reasons which Client is responsible for.

#### **IX. Liability**

We shall only be liable for damages which are based on a grossly negligent or deliberate breach of duty by us, our legal representatives or our vicarious agents, unless damages are concerned resulting from injury to life, limb or health. Unaffected shall remain the liability based on the provisions of the product liability law, for culpable breach of major contract obligations, for fraudulent deception and for guaranteed quality characteristics. In case of the breach of major contract obligations, liability shall be limited to the foreseeable, typically occurring damage.

#### **X. Place of performance, legal venue and applicable law**

As far as Client is a merchant, place of performance and legal venue shall be the registered office of the Contractor's headquarters.

The law of the Federal Republic of Germany shall apply between the contracting parties. Application of the UN Sales Law (CISG) shall be excluded.