

## **§ 1 Scope**

1. All deliveries and services of Mietzsch GmbH Lufttechnik Dresden – hereinafter referred to as the ‘Seller’ – are based exclusively on the following General Terms and Conditions (GTC). Any agreements deviating from these General Terms and Conditions only take effect with the express written confirmation of the Seller. The invalidity of individual provisions of these General Terms and Conditions does not affect the validity of the remaining provisions.
2. These General Terms and Conditions apply to all purchase, work and service contracts as well as deliveries and other services, including consulting services. The Buyer’s terms and conditions of purchase are hereby expressly rejected, even if the Buyer stipulates otherwise in their general terms and conditions. Any deviating agreements must be made in writing by both contracting parties in order to be valid.
3. The Seller’s advisory services are provided to the best of their knowledge and belief, but with no guarantee as to the accuracy and completeness of the information.
4. These General Terms and Conditions also apply to digital communication by e-mail or online orders.
5. These General Terms and Conditions apply to all current and future business relationships between the Buyer and Seller.

## **§ 2 Offer and conclusion of contract**

1. The Seller’s offers are subject to change without notice and non-binding, unless expressly agreed otherwise in writing. A contract only comes into effect upon written confirmation of the order by the Seller or upon actual execution of the order. The Buyer is liable for all damages resulting from incomplete or incorrect information provided in the order. They are obliged to inform the Seller immediately of any changes to their information.
2. Illustrations, drawings, weights and dimensions in the Seller’s offers are approximate values and are only binding if they have been expressly confirmed as such in writing. The Seller reserves the right to make changes. All prepared cost estimates, drawings and other documents remain the intellectual property of the Seller. The Buyer undertakes to treat this information as confidential and not to disclose it to third parties without the Seller’s express written consent. The Seller reserves the right to take legal action in the event of non-compliance.

## § 3 Price and payment

1. Unless otherwise agreed, prices are ex works (EXW – Incoterms® 2020) plus packaging, freight, postage and insurance costs. The applicable statutory value added tax will be charged in addition.

2. Unless otherwise agreed, invoices are due for payment without deduction within 30 days of the invoice date. We grant a 2% discount for payments made within 10 days of the invoice date.

Unless otherwise agreed, the following terms of payment apply to ventilation systems:

- 30% down payment upon order confirmation
- 30% upon notification of readiness for dispatch of the main parts
- 40% must be paid within 30 days of notification of readiness for dispatch

3. Offsetting against counterclaims of the customer is only permitted in so far as these are undisputed or legally established. A right of retention can only be asserted on the basis of counterclaims arising from the same contractual relationship.

4. If, after conclusion of the contract, circumstances become known that significantly affect the customer's creditworthiness, we are entitled to demand security or to withdraw from the contract. Claims for damages by the customer due to justified withdrawal are excluded.

5. In the event of late payment, we will charge interest on arrears at a rate of 9 percentage points above the respective base rate of the European Central Bank. We reserve the right to claim higher damages for delay.

6. Payments to the Seller are to be made to the bank account specified on the invoice.

## § 4 Delivery time

1. The delivery period commences on the date of order confirmation, but not before all technical and commercial details have been clarified, all necessary documents, approvals and releases have been provided by the Buyer, and the agreed advance payments have been received. Delivery times are generally non-binding unless they have been expressly agreed in writing as 'fixed dates'.

2. The delivery period is deemed to have been met if the delivery item has left the factory by the end of the period or if the Buyer has been notified of its readiness for dispatch.

3. The delivery period is extended appropriately in the event of force majeure, industrial disputes (in particular strikes and lockouts) as well as unforeseen obstacles that are beyond the Seller's control and significantly affect the completion or delivery of the delivery item. This also applies to events at subcontractors. The aforementioned circumstances entitle the Seller to extend the deadline, even if they occur during an already existing delay in delivery. The Seller will inform the Buyer immediately of the beginning and end of such obstacles in important cases.
4. In the event of a delay in the provision of services, the Buyer may set the Seller a reasonable grace period of at least one month in writing. After the unsuccessful expiry of this grace period, the Buyer is entitled to withdraw from the contract by means of a written declaration.
5. Claims for damages by the Buyer due to delay or non-performance are excluded, unless the Seller has acted intentionally or with gross negligence.
6. Compliance with the delivery period requires the timely and complete fulfilment of all contractual obligations of the Buyer.

## **§ 5 Transfer of risk and acceptance**

1. In accordance with EXW – Incoterms® 2020, the risk is transferred to the Buyer upon delivery of the goods for collection by the Buyer at the agreed location. This also applies to partial deliveries or if the Seller provides additional services such as shipping costs, delivery or assembly.
2. If acceptance has been agreed, the risk passes to the Buyer upon successful acceptance. Acceptance must take place on the agreed date or immediately after notification of readiness for acceptance by the Seller. The Buyer is obliged to accept delivery unless there are significant defects.
3. If dispatch is delayed as a result of circumstances for which the Buyer is responsible, the risk is transferred to the Buyer from the day of readiness for dispatch. However, the Seller is obliged to arrange insurance at the request and expense of the Buyer.
4. Transport damage must be reported in writing to the Seller and the transport company immediately, but no later than seven working days after receipt of the goods. The damage report must be accompanied by written confirmation from the transport company. In addition, photo/video documentation must be provided with the damage report.
5. The Buyer is obliged to accept the delivered items even in the event of minor defects. This does not affect the rights of the Buyer in accordance with Section 7 (claims for defects).

6. In the event that the customer is in default of acceptance or unjustifiably refuses acceptance and a corresponding grace period of ten days has expired without result, the Seller reserves the right to withdraw from the contract. In this case, the Seller may demand reimbursement from the Buyer for the costs incurred for storage. This does not affect the assertion of default interest. The obligation to reimburse storage costs also applies if the Seller does not exercise their contractual right of withdrawal. The monthly storage fee is 1% of the respective delivery value, up to a maximum of 5%. The customer reserves the right to prove that the damage was minor or lower.

## **§ 6 Retention of title**

1. The Seller retains ownership of the delivery item until receipt of all payments from the entire business relationship with the Buyer.

2. If the delivery item is processed by the Buyer, the processing is carried out for the Seller as the manufacturer without obliging the Seller. If processed with other items not belonging to the Seller, the Seller shall acquire co-ownership of the new item in proportion to the invoice value of the delivery item to the other processed items at the time of processing. In all other respects, the same applies to the new item resulting from the processing as to the delivery item delivered subject to reservation.

3. The Seller is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the Buyer's expense, unless the Buyer can prove that they have taken out insurance themselves.

4. The Buyer may not pledge or transfer the delivery item as security before full payment has been made. In the event of seizures as well as seizures or other dispositions by third parties, the Seller must be notified immediately.

5. In the event of breach of contract by the Buyer, in particular in the event of default in payment, the Seller is entitled to take back the goods after issuing a reminder and the Buyer is obliged to surrender them. The assertion of the retention of title and the seizure of the delivery item by the Seller is not deemed to be a withdrawal from the contract.

6. Due to the retention of title, the Seller may only demand the return of the delivery item if they have withdrawn from the contract.

7. The application for the opening of insolvency proceedings entitles the Seller to withdraw from the contract and to demand the immediate return of the delivery item.

## § 7 Claims for defects

For material and legal defects of the delivery, the Seller provides the following warranty to the exclusion of further claims – subject to Section 8 (Liability):

### Material defects

1. All parts that prove to be defective as a result of circumstances occurring before the transfer of risk are to be repaired or replaced free of charge at the Seller's discretion. The discovery of such defects must be reported to the Seller in writing without delay. Replaced parts become the property of the Buyer.
2. The Buyer will, after consultation with the Seller, allow the Seller the necessary time and opportunity to carry out all repairs and replacement deliveries deemed necessary by the Seller; otherwise, the Seller will be released from liability for the resulting consequences. Only in urgent cases where operational safety is at risk or to prevent disproportionately large damage – in which case the Seller must be notified immediately – does the Buyer have the right to remedy the defect themselves or have it remedied by third parties and to demand reimbursement of the necessary expenses from the Seller.
3. Of the direct costs incurred by the repair or replacement delivery, the Seller bears the costs of the replacement item, including shipping, in so far as the complaint proves to be justified.
4. Within the framework of the statutory provisions, the Buyer has a right to withdraw from the contract if the Seller – taking into account the statutory exceptional cases – allows a reasonable period of time set for rectification or replacement to pass without result due to a material defect. If there is only a minor defect, the Buyer is only entitled to a reduction in the contract price. Otherwise, the right to reduce the contract price remains excluded. Further claims are determined in accordance with Section 8 (Liability) of these Terms and Conditions.
5. In particular, no liability is accepted in the following cases:
  - unsuitable or improper use
  - incorrect installation or commissioning by the Buyer or third parties, in particular in the event of non-compliance with the DVS 2207 or DVS 2212 guidelines of the German Welding Technology Association
  - non-compliance with electrical connection regulations
  - non-compliance with the operating instructions
  - natural wear and tear

- incorrect or negligent handling
- improper maintenance, unsuitable operating materials
- defective construction work
- unsuitable building ground
- chemical, electronic or electrical influences – unless the Seller is responsible for them

6. If the Buyer or a third party carries out improper repairs, the Seller is not liable for the consequences. The same applies to modifications made to the delivery item without the prior consent of the Seller.

## **Defects of title**

1. If the use of the delivery item leads to the infringement of industrial property rights or domestic copyrights, the Seller will, at its own expense, either procure the right for the Buyer to continue using the delivery item or modify the delivery item in a manner reasonable for the Buyer so that the infringement of property rights no longer exists. If this is not possible under economically reasonable terms or within a reasonable period of time, the Buyer is entitled to withdraw from the contract. Under the aforementioned conditions, the Seller also has a right to withdraw from the contract. Furthermore, the Seller will indemnify the buyer against any undisputed or legally established claims by the relevant intellectual property rights holders.

2. The Seller's obligations specified in Section 7 are final in the event of a breach of protective rights or copyright, subject to Section 8. They only apply if

- the Buyer immediately informs the Seller of any asserted infringement of property rights or copyrights and
- the Buyer supports the Seller to a reasonable extent in defending the claims asserted or enables the Seller to carry out the modification measures in accordance with Section 7
- the Seller reserves the right to take all defensive measures, including, including out-of-court settlements, and
- the defect in title is not based on an instruction from the Buyer, and
- the infringement of rights must not have been caused by the Buyer arbitrarily modifying the delivery item or using it in a manner that is not in accordance with the contract

## **§ 8 Liability**

1. If the delivery item cannot be used by the Buyer in accordance with the contract due to a fault on the part of the Seller – through the omission or incorrect execution of suggestions and advice given before or after the conclusion of the contract, or through the breach of other ancillary contractual obligations, in particular through the breach of obligations to provide instructions for the operation and maintenance of the delivery item – the provisions of Sections 7 and 8 apply accordingly, excluding any further claims by the Buyer.
2. For damage that has not occurred to the delivery item itself, the Seller is liable – for whatever legal reasons – only
  - a. in the event of intent
  - b. gross negligence on the part of the owner/company bodies or executive employees, or
  - c. in the event of culpable injury to life, limb or health
  - d. for defects that they have fraudulently concealed or whose absence they have guaranteed
  - e. in the event of defects in the delivery item, in so far as liability exists under the Product Liability Act for personal injury or property damage to privately used items
3. In the event of culpable breach of essential contractual obligations, the Seller is also liable for gross negligence on the part of non-executive employees and for slight negligence; in the latter case, however, liability is limited to reasonably foreseeable damage typical for this type of contract.
4. Further claims are excluded.

## **§ 9 Statute of limitations**

1. All claims of the Buyer – for whatever legal reasons – expire after twelve months. For installed ventilation systems, the warranty period is 24 months, excluding mechanical, electrical and electronic parts and assemblies contained in the system.
2. Claims arising from replacements or repairs expire after three months. The statutory time limits apply to claims for damages under Section 8.

## **§ 10 Applicable law, place of jurisdiction**

1. All legal relationships between the Seller and the Buyer are governed exclusively by the law of the Federal Republic of Germany applicable to the legal relationships between domestic parties.
2. The place of jurisdiction is the court responsible for the Seller's registered office in Dresden. However, the seller is entitled to bring legal action at the Buyer's head office.