

General Terms of Delivery, Services and Payment for Luftmeister GmbH

Date: 15/06/2017

1. General

All deliveries and services provided by us, Luftmeister GmbH (abbr: LMG), are subject to these General Terms of Delivery, Services and Payment as well as any other contractual terms and conditions which may have been agreed separately. Deviating and supplementary General Terms and Conditions of the customer shall be deemed binding only if expressly confirmed by us in writing. Other contractual terms and conditions shall not be applicable even if we do not object to them and the contract is performed.

2. Offers – Conclusion of Contract – Content of Contract

2.1 Our offers are non-binding and subject to change without notice unless expressly identified as binding. Binding offers must be accepted by the customer within a reasonable period.

Oral or written offers shall be deemed to have been accepted by us when we issue the written order confirmation or the ordered goods are dispatched or the service provided. Oral supplements to the contract shall apply only if they are confirmed by us in writing.

2.2 The drawings, technical specifications and other documents attached to the offer are subject to our ownership and copyright. The customer may not make these available to third parties.

3. Scope of Delivery and Services

3.1 The scope of deliveries and services shall be defined exclusively by our offer or our written order confirmation. Partial deliveries are permissible insofar as they are reasonable for the customer.

3.2 The type and scope of the services we supply (e.g. consulting, evaluation and engineering, diagnosis, assembly and installation, commissioning, servicing and maintenance, measurements, training courses) shall be determined on the basis of the relevant agreements concluded with the customer, in accordance with our offer and, unless described in greater detail in our offer, in accordance with our respective inspection lists and checklists as well as the valid work schedules. All our services are supplied as services according to the definition of §§ 611 ff BGB (German Civil Code) unless expressly agreed otherwise.

4. Prices and Payments

4.1 Information in price lists and other price information is non-binding and updated by us at regular intervals.

The price is always calculated based on the prices effective on the day of the delivery or provision of the service unless a fixed price has been agreed by us in writing.

4.2 Our prices are stated in EUR and, unless otherwise agreed, exclusive of packaging, customs clearance and transport costs. The statutory rate of value-added tax will be added in each case.

4.3 If deliveries and/or services are performed more than 9 months after the date stated in the order confirmation, we shall be entitled to calculate new prices if changes have occurred in list prices, costs of materials, wages and/or other costs during this period. The prices

offered are valid only for the respective individual order. Fixed prices must be agreed in writing.

4.4 Costs for packaging, shipping and insurance products expressly requested by the customer will be charged separately at the prices applicable at the time they are incurred.

4.5 If we have also agreed to provide services (in the sense of 3.2., e.g. installation or commissioning), the customer shall be charged not only for the delivery but also for all installation or commissioning costs in accordance with our price list at the time these services are performed, unless otherwise agreed.

4.6 Invoices for deliveries are payable to our payment office within 30 days from the date of the invoice without deduction – unless otherwise agreed.

4.7 Invoices for services are payable to our payment office account immediately without deduction – unless otherwise agreed.

4.8 The customer is only entitled to withhold payments or offset these with counterclaims if such counterclaims are undisputed or have been determined to be legally binding.

4.9 Should the payment deadline be exceeded, while reserving the right to claim for further damages, we will charge interest on the payment at a rate of 8 % above the base interest rate. Payment by bill of exchange requires our express agreement.

4.10 The customer may not transfer claims against us.

5. Deadlines for Delivery and Provision of Services, Delay, Force Majeure

5.1 Deadlines for deliveries and the provision of services shall only be binding for us if they have been expressly confirmed as such in writing. Other deadline periods are non-binding and may be exceeded by a reasonable amount (approx. 4 weeks). The time at which the shipment was dispatched from our factory shall be the decisive factor in determining compliance with the agreed delivery deadlines.

5.2 Compliance with deadlines and delivery periods for goods and services shall be subject to the timely fulfilment of all obligations on the part of the customer – especially the provision of necessary documentation, permits and releases, especially of plans – as well as compliance with the agreed conditions of payment and other customer obligations. Should these requirements not be fulfilled punctually, our deadlines and delivery periods shall be extended by an appropriate period of time.

5.3 In case of delays or failure to meet deadlines due to force majeure or other events beyond our control, e.g. terrorist attacks, civil unrest, similar current threats, strike action including strikes at our subcontractors, official measures such as import/export restrictions, or breakdowns, the deadlines for the delivery of the products/services shall be extended for the duration of the hindrance or we reserve the right to withdraw from the contract either in part or in whole.

5.4 The customer is obliged to respond to our request within a reasonable period and declare whether he wishes to withdraw from the contract due to our delay or insist on receipt of the delivery or service.

6. Services

6.1 To the extent that the performance of services has been agreed (especially installation or commissioning), the customer shall provide or ensure the following punctually and at his own cost – unless otherwise agreed:

- a) all advance work for the installation provided by the customer – especially the laying of electrical power supply and signal cables,
 - b) all necessary equipment and materials required for installation and commissioning, such as scaffolding, lifting equipment etc., to ensure safe access to the measurement location,
 - c) power and lighting at the place of use,
 - d) availability of the person responsible for the operation of the ventilation system during the service and installation/commissioning of the measurement location,
 - e) set up of operating conditions within the ventilation system which permit the service to be performed,
 - f) sufficiently large, suitable, dry and lockable rooms at the installation site for storing machine parts, equipment, materials, tools etc. as well as suitable work and break rooms and sanitary facilities for our employees and those of our subcontractors;
- the customer shall also take the same measures to protect our property as well as that of our employees and subcontractors on the site as he would take to protect his own property.
- g) protective personal clothing and equipment beyond that usually required but which are necessary due to special circumstances at the place of installation,
 - h) parking facilities in reasonable proximity to the site

6.2 Prior to work starting, the customer shall provide without request all necessary information regarding the location of hidden electricity cables, gas and water pipes, sprinkler systems or similar installations.

6.3 Prior to work starting, the provisions and equipment required to commence the work must be present at the place of installation and all advance work must have been completed to such an extent that installation by our employees can begin upon their arrival as agreed and completed without interruption. Approach roads, the site and place of installation must be accessible.

6.4 The customer shall grant us and our subcontractors access during normal working hours in order to perform the service without delay. Otherwise we shall be entitled to bill waiting times separately. These will normally be billed at the hourly rates charged for performing work. If the customer wishes work to be performed outside our normal working hours, the customer shall bear the additional costs associated with this work.

If installation or commissioning is delayed due to circumstances for which we do not bear responsibility, the customer shall bear all reasonable costs incurred due to waiting times and necessary additional journeys made by our employees or those of our subcontractor.

6.5 On request, the customer shall certify in writing the duration of the work performed by our employees or those of our subcontractors as well as the conclusion of the installation or commissioning work.

6.6 If we request written acceptance after completion of the work agreed in the contract, the customer must provide this acceptance within two weeks. If this does not occur, acceptance shall be considered completed after this period has expired. Acceptance shall furthermore be deemed to have taken place if the system is put into operation – or after the completion of an agreed test phase.

7. Transfer of risk

7.1 The risks shall be transferred to the customer at the latest when the shipment is dispatched, even in the case of partial deliveries or when we have undertaken to provide

other services. To the extent that we have also agreed to perform installation or commissioning, the risk shall be transferred to the customer upon delivery of the shipment to the place of installation.

7.2 If the dispatch of the delivery item, the installation or commissioning is delayed or does not occur due to reasons for which the customer is responsible, the transfer of risk shall take place at the time at which it would have occurred had it not been delayed.

7.3 At the customer's request and expense, we will insure the delivery item against theft, breakage, transport, fire or water damage or other insurable risks.

8. Retention of title

8.1 The delivered goods shall remain our property until all claims that we may hold against the customer arising from the business arrangement have been fulfilled, even if payment has already been made for the goods in question.

8.2 The assertion of any claim for restitution is not to be regarded as withdrawal from the contract. The customer must immediately inform us in writing about any foreclosure proceedings by third parties against the goods subject to retention of title and provide us with the documents necessary for an intervention – this also applies for other kinds of interference. Independently thereof, the customer is obliged to inform third parties in advance of the retention of title relating to the goods. Intervention costs are payable by the customer if the third party is unable to refund these.

8.3 If the goods subject to retention of title are to be resold, the customer shall immediately assign the receivables resulting from these transactions with third parties as security to us until our claims have been settled.

8.4 If the goods subject to retention of title are processed, reshaped or connected with another object, we shall be deemed to be the manufacturer and obtain direct ownership of the manufactured object in proportion to the value of the item(s) we delivered. The manufactured object shall be considered goods subject to retention of title.

8.5 If our goods are processed, mixed or combined with products from a third party, the title of which is retained, we shall acquire co-ownership of these processed goods in proportion to the invoice value.

8.6 The customer is entitled to dispose of the purchased goods in the normal course of business as long as he fulfils his payment obligations to us and is not in default. Pledging and assigning the goods subject to retention of title as security are not permitted.

8.7 If the value of all securities held by us exceeds our claim against the customer by more than 20%, we shall, at the request of the customer, release securities of our choice.

9. Warranty

We offer the following warranty for defective goods, excluding further claims and subject to the terms of section 11:

A) Deliveries

9.1 The customer must notify us about defects in writing without delay. The warranty period for all new machinery and equipment sold as well as services provided corresponds to the statutory warranty period unless otherwise agreed in writing.

9.2 All defective parts or services shall, at our discretion, be rectified, replaced or performed again free of charge. The customer may not refuse to accept any deliveries due to insignificant defects.

9.3 The customer shall grant us reasonable time and opportunity to remedy the defect(s) and deliver the replacement product. Only in urgent cases where there is a risk to operational safety, or to avert disproportionate further damage, shall the customer be entitled to remedy the defect himself or have the defect remedied by third parties. A refund of the costs arising for these measures can only be claimed – within the limitations of section 9.5 – if we were given the opportunity to avert the danger or damage ourselves and the danger can be proven to have resulted from our delivery or service. In these cases, we must be notified immediately. If the customer denies us the opportunity to rectify/replace the goods/service, we shall be free from any obligations under the warranty.

9.4 If the defect is not rectified within a reasonable period of time or the attempt to rectify the defect fails, the customer may withdraw from the contract. If the defect is only of a minor nature, the customer shall only be entitled to reduce the purchase price. The right to a reduction in the purchase price otherwise remains excluded.

9.5 Of the costs arising from the rectification or replacement delivery, we shall – in the event that the complaint is revealed to be justified – be responsible for payment of the costs of the replacement item including shipping costs. Furthermore, we shall also bear the costs of labour provided by our employees and those of our subcontractors including travel costs, insofar as this does not entail an unreasonable burden.

9.6 . Claims relating to defects shall not apply in the following cases: unsuitable or improper use, incorrect installation or commissioning by the customer or third parties, natural wear and tear, incorrect or negligent handling, incorrect maintenance, use of unsuitable operating materials, electrochemical or electrical factors – provided that we are not accountable for the causes. In these cases, the customer must first prove that the cause lies with us.

9.7 If the customer or a third party rectifies a product incorrectly, we shall not be liable for the consequences. This shall also apply if the alterations to the delivery item are made without our prior agreement.

9.8 For claims of compensation for damages, the provisions of section 11 shall apply. Any further claims against us due to defects are excluded.

B)
Services

9.9 The customer shall report any apparent fault in the service to us in writing within two weeks of the service being provided, other faults within 2 weeks after detection but no later than 12 months after the service was provided. Faults in services that are belatedly reported will not be considered. Furthermore, the provisions of section 11 shall apply in respect of claims for damages. Any further claims against us are excluded.

9.10 We shall immediately rectify faults which have been reported correctly.

10. Warranty exclusions

10.1 Specifications in catalogues, product descriptions, data sheets, offers, charts or any other documents made on the measurements, quantities, colours, applications, technical data and other features, in particular regarding availability, accuracy of measurements, etc.

refer to the quality and performing features of a delivery item, yet do not – unless otherwise provided for expressly – constitute guarantees (guarantees of quality or durability) in terms of §§ 443, 639 BGB (German Civil Code).

10.2 In the case of goods or services failing to comply with the guaranteed properties, the customer may assert the rights described in section 9.

11. Compensation

11.1 We shall be liable to pay compensation – irrespective of the legal grounds – only:

- a) in the case of intent,
- b) in the case of gross negligence,
- c) in the event of injury to life, body and health,
- d) in the case of defects we have maliciously concealed,
- e) insofar as we have provided a guarantee,
- f) in accordance with the regulations of the German Product Liability Act or
- g) in the event of a breach of a material contractual obligation.

11.2 If we breach a material contractual obligation (11.g), i.e. an obligation which is a precondition for the proper performance of the contract and upon which a party to the contract regularly relies and may generally rely, or an obligation whose breach will put the achievement of the contractual purpose at risk, due to only slight negligence, our obligation to provide compensation is limited to the damages typically foreseeable under the contract. This shall also apply for lost profits or other financial losses.

11.3 Our liability is restricted in all cases, regardless of the legal justification, with the exception of the cases described in 11.1 1 a) to f), to the total value of the order. Any further claims for compensation are excluded.

12. Export

12.1 In case of export, the ordering party must adhere to the export control regulations applicable to each delivery item.

12.2 If our delivery contains an export which is subject to approval by the authorities, the contract shall only be deemed to have been concluded upon receipt of such approval. The customer undertakes to provide and submit all documents required for obtaining approval.

12.3 The customer agrees to furnish proof of usage and/or end usage upon request even if this is not required officially.

12.4 In the case of export/transfer, the delivery shall only be exempted from German value added tax upon receipt of a valid export certificate.

13. Amendment, withdrawal

13.1 Insofar as unforeseeable events, such as those described in 5.3, substantially change the commercial importance or the contents of the delivery or have substantial implications for our operations, the contract shall be amended appropriately subject to the provisions of 5.3 and in good faith. Where this is not economically justifiable, we shall have the right to withdraw from the contract.

13.2 The supplier shall be entitled to withhold its services or to withdraw from the contract if he becomes aware of any circumstances whereby the ordering party is at risk of becoming

insolvent, or unwilling or unable to fulfil its payment obligations at the agreed time due to other reasons.

14. Limitation

14.1 All claims by the customer for deliveries shall become time-barred – irrespective of the legal grounds – in 24 months. This shall not apply in cases of injury to life, body or health, intent or gross negligence, fraudulent conduct or claims under the German Product Liability Act (Produkthaftungsgesetz).

14.2 All claims by the customer for services shall become time-barred – irrespective of the legal grounds – in accordance with the statutory regulations.

15. Court of jurisdiction and applicable law

15.1 If the ordering party is a merchant, the sole court of jurisdiction for all disputes arising directly or indirectly out of the contract shall be either Freiburg im Breisgau, or at our discretion, the general court of jurisdiction of the customer.

15.2 The legal relations of the parties in connection with this contract are subject of the laws of the Federal Republic of Germany. The parties hereunto do not acknowledge application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16. Final provisions

Should a provision of these terms and conditions be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected. In such a case, the invalid or unenforceable provision shall be amended in such a way as to achieve the original commercial purpose of the contract. This shall not apply if continued adherence to the contract would constitute unreasonable hardship for one of the parties.

Kirchzarten, 15 September 2017