

Terms and conditions

Standard Business Conditions

Date: 18.03.2020

I. General terms of sale, payment, and delivery of DLK Ventilatoren GmbH, Berlichingen

1. General

1.1 Our general terms and conditions are exclusively applicable for the entire business relation with our customers. We do not accept conflicting or deviating terms and conditions of the customer unless we had explicitly approved their validity in written form. Our general terms and conditions will also apply exclusively if we carry out orders unconditionally despite contrary or deviating terms and conditions of the customer. Our general terms and conditions will also apply to all future business with the customer even if not expressly agreed upon again.

1.2 These conditions solely apply to companies, legal persons under public law and operating on special funds under public law.

2. Quotations and contracts

2.1 Our offers are always subject to change and not binding unless otherwise stated in our quotation. Remaining silent to an offer of the customer shall not qualify as acceptance.

2.2 A contract of supply only becomes valid after our written order confirmation. If a confirmation was not made our product as supplied or the packing list will act as order confirmation. Oral agreements require written confirmation by us.

2.3 Dimensions, weights, graphics, descriptions and other information stated in our catalogues, leaflets, price lists or preliminary estimates serve only as non binding indication and only with subject to any technical modification become binding contractual content if explicitly confirmed in writing by us.

2.4 Details on material and durability can only be considered as guarantees if expressly stated as such. The same applies for the acceptance of a procurement risk.

2.5 Our written order confirmation determines nature and scope of supply. We are entitled to make part deliveries as far as they are reasonable for the customer. Subsequent modifications of the customer will only become part of the contract if the technical feasibility has been confirmed by us in writing. The costs for the modification will be invoiced by us.

2.6 Employees, travelling salesmen, or sales agents of our company do not have authority to collect payments, unless there is an explicit, written authorisation available.

3. Delivery

3.1 The time for delivery are only approximate, unless it has been explicitly agreed as binding by written statement. The time for delivery commences with the dispatch of our order confirmation, but not prior to the complete clarification of all questions and supply of each of the customers contractual obligations and receipt of any advance payment of the buyer required for the execution of the order. If we supply the customer on advance payment the time for delivery will start with the receipt of the advance payment amount. Subsequent requested modification by the customer will cause an interruption of the agreed delivery period. After mutual agreement about the modification the delivery period will start again or the date of delivery will be newly fixed.

3.2 The time for delivery is deemed to be met if the scope of delivery has left our factory or if we have duly notified about the delivery readiness and through no fault of ours the scope of delivery can not be dispatched in time until the expiry of this term.

3.3 We are entitled to extend the time for the delivery and the service for a time equal to the duration of the hindrance plus an appropriate time period for resuming work in case of delays in deliveries and services due to force majeure and due to events with causes beyond our control as well as due to significant company related issues. The same applies if equal circumstances affect our suppliers or take place during an already existing delay. The customer as well as ourselves are entitled to withdraw from the respective part of the contract not fulfilled, if the hindrance is lasting longer than three months. Beginning and ending of such hindrances will be communicated to the customer as soon as possible.

3.4 We are entitled to stop further deliveries in the event of a customer being in default of payment for earlier deliveries in the course of current business relations. Whereby the incurred costs for the customer are at his own expense.

3.5 Deliveries on call have to be called for shipment at the latest 6 months after the first part delivery. We are entitled to dispatch the ordered goods after this period. If the customer is in default of acceptance or if he fails in the supply of his contractual obligations, we are entitled to demand reimbursement of the losses incurred by us. This is with reservations to assert further claims.

4. Prices

4.1 The prices are ex works production location excluding packing, custom duties, insurance, mounting and mounting assistance, shipping costs and taxes.

4.2 We reserve the right to invoice the current applicable price at the date of delivery in case of cost reductions or cost increases due to material price and wage increases or changes, if the delivery takes place later than four months after our order confirmation. We will prove the cost changes to the customer upon request.

4.3 We also reserve the right to recalculate prices in a manner reasonably acceptable for the customer in the event of the subject of the contract being technically improved compared to the original at the date of contract signing.

4.4 For deliveries on call we will always invoice the prices valid at the moment of shipment or the date due for delivery.

4.5 For quantities below regular minimum we are entitled to invoice cost covering surcharges or to reduce discounts. For small orders with a value below 100 Euro, we will have the right to invoice a minimum of 100 Euro per order.

5. Payment

5.1 Unless explicitly confirmed differently, our invoices are payable without any deduction within 30 days of the date of the invoice. We grant a 2% discount for payments in cash, per cheque or per wire transfer within 10 days of the date of the invoice unless previous due invoices are fully or partially unpaid. If we supply the customer on advance payment, we grant a 3% discount. A discount will not be granted for invoices for mounting and installation works, repairs or similar services.

5.2 For delayed payments on behalf of the customer, we are entitled to invoice interest of annually 8 percentage points above the respective basic interest rate (§ 247 BGB). We reserve the right to claim against proof of further damages due to delay.

5.3 We accept bills of exchange only after a prior written agreement. The amount will be credited only on account of performance. The costs associated with the bill of exchange will be borne by the customer.

5.4 Following an expiry of an appropriate period of grace, we are entitled to make services still to be performed only against prepayment or to make them dependant upon the provision of a security, if the customer is in delay with payments as agreed or if there are circumstances which by applying usual bank standard raise doubts about the customer's solvency. In addition, we are entitled to make our accounts receivable immediately due and to demand securities, regardless of the term of any bill of exchange.

5.5 The customer is only allowed to set off claims undisputed by us or legally determined.

5.6 The exercise of retention rights by the customer is only allowed if his counterclaim arising from the same contractual relationship.

5.7 If we have granted the customer payment by instalments, we are entitled to make the total remaining purchase price immediately due, once the customer is in delay with a payment instalments amounting to more than 10% of the total purchase price.

6. Packing and Shipping

6.1 The packing is in accordance with commercial standards at our discretion. These are disposable packing which are calculated at the lowest price and which may not be returned.

6.2 We are committed to select the - in our opinion - possible best route of transport, unless a certain transport mean has been determined in advance. If additional expenses should arise for a customer requested transport method, the customer has to bear them. On customer's demand, we will insure the respective shipment against theft, breakage, transport, fire and water damage at his expense.

6.3 Our deliveries are ex works, excluding packing. The packing costs and the transport of our goods from the place of production to the place of destination will be expensed to the customer.

7. Transfer of Risk

7.1 The risk is transferred to the customer as soon as the good leaves our production location or our storage facilities. This also applies, if we have accepted the responsibility for additional services, e.g. the as loading, transport or unloading. If a shipment is delayed due to circumstances the customer is responsible for, the price risk is transferred to the customer on the date of notification of the delivery readiness. In this case, we are entitled to store the goods at our discretion at the customer's expense and risk and to invoice them as ex works.

8. Retention of Title

8.1 We reserve the right to keep the property of the goods delivered until all receivables of the ongoing business are settled with the customer. This applies for the recognition an account balance too.

8.2 The customer has the right to resell the goods delivered in the course of a proper business transaction, if he is not in delay with payments. But he already now assigns to us any receivables equivalent to the respective invoice value (including V.A.T.) of the receivable, which accrue to him from the resale to his client or a third party and regardless of whether the delivery item was resold with or without further processing. However, we authorise our customer, with subject to reservation of authorisation withdrawal, to collect those claims. Our authorisation to collect the receivables ourselves remains unaffected by this. But, we are committing ourselves not to collect the receivables ourselves as long as the customer duly complies with his payment obligations from the collected proceeds, is not in default with payments and in particular provided that no petition to open a composition or insolvency proceeding has been filed in respect of customers assets or a suspension of payments on his behalf occurs. In this event, this customer is obliged at our request to notify us of the assigned claims and their debtors, to furnish all data required for the collection of the receivables, to provide any relevant document and to notify the debtor (third parties) of the assignment.

8.3 A modification or processing or re-shaping by the customer of goods supplied by us is always made to the responsibility of the customer without engaging ourselves. If the delivered good is processed with other goods which are not our property, we shall acquire co-ownership of the new good in the proportion of the value of the delivered good (respective invoice value including V.A.T.) to the other goods processed at the time of the processing. As for the rest, the provisions for the goods delivered under reservation of title apply to the good produced by the processing.

8.4 In the event of the purchased good being inseparably mixed with other goods which are not our property, we shall acquire co-ownership of the new good in the proportion of the value of the delivered good (respective invoice value including V.A.T.) to the other goods mixed at the time of the mixing. If the goods are mixed in such a manner that the customer's good is regarded as the main good, it is agreed that the customer transfers proportionally co-ownership. The aforementioned provisions for the goods delivered under reservation of title are also valid for this.

8.5 If we acquire co-ownership on the sold goods subject to reservation of title according to the aforementioned provisions, the customer transfers his claims against the purchaser to us amounting to the value of the co-ownership. The customer will also transfer those claims as a security to us which arise by the combination with or installation on a property against a third party. Those assignments are already being accepted by us now.

8.6 The customer will preserve the good subject to reservation of title for the purpose of the preceding provision respectively the replacing items for us free of charge in the course of a proper business transaction.

8.7 The customer is obliged to handle the delivered good with due care and to maintain it in a proper condition, as long as the ownership has not been transferred to him. Therefore, the customer has to insure the goods delivered to him against loss or damage due to theft, fire, water or similar events at its own expense and in our favour and to prove the insurance to us upon request. The customer is obliged to perform any required service and inspection works at his own expense and in due time.

8.8 Exceeding provisions about the goods subject to reservation of title as well as the replacing claims must not be made by the customer. If the good subject to reservation of title or replacing claims should become subject to a seizure or confiscation by a third party, the customer has to inform about our authorisation and to notify us immediately, in order for us to be able to exercise our rights against third parties properly. Furthermore, the customer will be liable also for resulting losses, for judicial and extra judicial expenses of legal proceedings against third parties and has to reimburse these to us.

8.9 On request of the customer we will release the item supplied in that proportion which our interest of security will be cancelled. This is the case if the value to be realised is exceeding 110% of the secured claim and this not only temporarily. It will be guessed that the top cover will be reached if the expert's evaluation at the moment of release corresponds to 150% of the secured claim. It is at liberty to the customer to supply another proof of the value of the supplied item.

8.10 Further, we are entitled to take back the goods subject to reservation of title although we may not have withdrawn from the contract after the expiration of period of grace set by us, if the customer violates the contract especially if he is in delay of payments as well as if our receivables are at risk due to a decline in the customers credit worthiness (refer to above). In these events, we are also entitled to sell the goods subject to reservation of title on the open market or have them auctioned. The respective proceeds will be credited to the customer's liabilities, with deduction of reasonable sales costs. The customer will further be liable for a aforementioned loss claim.

9. Warranty, obligations of the customer concerning notification of defects, reimbursement of expenses, liability

9.1 The assertion of any right to claim damages for any defects against us requires in the first place that the customer is duly in compliance with his legal examination and notice of non-conformity obligations (§ 377 HGB). This also applies if the customer resale's the delivered good. In the event of obvious defects or incompleteness of the good, we have to be notified thereof in writing and including a precise description of the defect and the order number immediately at the latest within 8 days after delivery at the destination location. Receipts, samples, packing lists and/or the defective good have to be returned to us upon further request by us. If the customers does not comply with these obligations, the right of the customer to claim for defect or incompleteness of the good are precluded. If it concerns a hidden material defects, they have to be notified immediately after their detection. The notification of defects which could have been detected during the inspection is precluded after the performance of an agreed acceptance.

9.2 The suitability and application risk of the purchased good shall be borne exclusively by the customer. We will assume liability for a specific application or a specific suitability only if this has been explicitly and in writing agreed upon. The customer is obliged to ensure the compliance with the technical parameters specified in the technical documentation and/ or in the supporting documents. The customer has to impose these and if applicable other specified restrictions of use also on his customers.

9.3 A defect on the good delivered is not our fault, if and as far as a fault is due to the customer failing in complying with the technical parameters specified in the technical documentation and/ or in the supporting documents. Furthermore we are not liable in cases of natural wear and tear of the delivered good, wrong or neglectful treatment, modification, installation as well as operation. Neither in events of wrong advise and operating instruction by the customer or a third party, excessive use, inapplicable place of installation, inapplicable operation tools and materials as well as inappropriate regulating of the electric power supply, chemical, electrochemical or electrical impacts, weather or other natural effects on the good delivered.

9.4 If the good is defective, we are entitled as supplementary performance at our discretion to remedy the deficiencies or to provide a defect-free replacement. The customer is only entitled to withdraw or to a reduction of contractual obligations in accordance with the legal regulations in the event of a repeated failure of the supplementary performances or if they are unacceptable and if the defect is not minor. The customers rights to claim for damages are limited to the provisions of clause § 9.7. A warranty period of 3 months after delivery or execution of the services shall apply for any replacement or compensation and rectification works, a period lasting at least up to the end of the warranty period of the initial goods pursuant to clause § 9.8.

9.5 The customer is obliged to grant us in coordination with us sufficient time and opportunity to carry out any necessary remedies and replacements. Otherwise we will be released from any liability for the resulting consequences. If the customer insists on an urgent deployment of a technician or the performance of works outside of normal working hours, the customer has to carry the resulting additional costs e.g. overtime premiums, longer transportation routes).

9.6 If we replace parts within the parameter of the supplementary performance, they will become our property. Our liability for spare parts is limited to the on the hand general terms and conditions, especially clause § 9.4.

9.7 We will be liable for damages in the events of explicit acceptance of a guarantee or a procurement risk as well as in cases of deliberate infringement or gross negligence of obligations. In the event of gross negligence, the liability for damages is limited to foreseeable, typically occurring damage. The liability regarding culpable injury to life, body, or health as well as claims in accordance with the product liability act remain unaffected from this. In the events of material damages and financial losses caused by slight negligence, we are only liable in the case of a violation of essential or fundamental contractual obligations, i.e. obligations that enable the due accomplishment of the contract in the first place and whose observance the contractual partner relies on and may rely on, regularly. However, again limited to contact typical damage predictable at the time of conclusion of the contract.

9.8 Claims for material defects and defects of title are time-barred within one year after transfer of risk. This does not apply to claims in accordance with § 438 Para.1 No.2 BGB. The statutory limitation periods apply in the event of intentional or gross negligent violation of

obligation, the assumption of procurement risks, the absence of guaranteed characteristics as well as for the injury of persons.

9.9 A cut-off period of 6 months applies to all claims, not being subject to time limitation due to a material defect, this period starts with the recognition of the defect and the party responsible for the damage. On the other hand, this does not apply to claims caused by intentional or gross negligent actions attributable to us.

9.10 If the customer is forwarding us the delivered good for the rectification of deficiencies and if we discover that the notice of defects is not valid, the customer will be requested by us to collect the good delivered or to notify us in writing that the delivered good is to be returned and repaired on the expense of the customer within a period of four weeks after receipt of the notification.

9.11 A further liability for damages other than provided in the aforementioned clauses of § 9 is excluded without consideration of the legal nature of the asserted claim. This applies in particular to claims for damages due to culpability at conclusion of contract, due to other obligation infringements or due to tort claims on compensation for material damage under §§ 823 BGB. This limitation does also apply, if the customer demands compensation for useless expenses instead of a claiming compensation for damages. This is without prejudice of further liability on our behalf due to fraudulent concealment of a defect.

9.12 The preceding clauses do also apply in the event of a violation of the product inspection obligation. The normal service life expectancy of the products delivered by us is determined by the information provided in the technical documentation and / or supporting documents.

9.13 The preceding limitations of liability do also apply with respect to reason and amount in favour of our legal representatives, clerks, employees, staff members and other assistants and authorised agents.

10. Applicable law, place of performance and place of jurisdiction

10.1 Our place of the registered head office is agreed as the place of jurisdiction for all disputes arising from the contractual relation also for bills of exchange, official document or bank cheque proceedings, if the customer is a registered merchant, a legal person under public law or a special fund under public law or does not have a domestic general place of jurisdiction within Germany. Nevertheless, we are entitled to sue the customer also at his place of jurisdiction.

10.2 It applies exclusively the governing law of the Federal Republic of Germany for the legal relations between domestic contractual partners. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is herewith excluded.

10.3 The place of fulfilment is the location of the supplying plant if not otherwise indicated on our order confirmation.

II. Additional Terms and Conditions for repair and other services General:

DLK Ventilatoren GmbH is among other things carrying out services such as maintenance, repair and measurements on fan equipment particularly for the maintenance of the operation

reliability. The above described general terms and conditions as well as supplementary the following additional provisions apply to these separately agreed upon services.

1. Dates of performance:

The agreed dates for repair and performances are only binding if the compliance is not delayed or made impossible by circumstances due to events with causes beyond our control, especially due to a failure in the supply of customers contractual obligations, In particular incomplete as well as completely missing documents necessary for the execution of the works are such circumstances.

2. Expenses for orders not carried out:

If the customer fails in the supply of his contractual obligations or if the order can not be processed by us, if:

1. the claimed fault can not be detected in compliance with the general technical rules and regulations;
2. the customer has culpably omitted the agreed date;
3. the order has been cancelled during the performance, the customer is obliged to compensate for the occurred and proven costs in particular for the preceding fault search.

3. Additional costs due to workflow stoppages

We try to keep the costs for our services low. For this reason we consider for the calculation of our prices a proper assistance and support for our customer at site. Therefore, the customer has also to compensate for respective additional expenses which we are beyond our control, for example insufficient or wrong information about the fans, instruments or site description, insufficient on site support, lack of or denied assistance, none compliances with schedule agreements.

4. Quotations:

If on behalf of the customer a quotation is issued, the associated costs can be invoiced to the customer regardless if subsequently a repair is ordered or not. The invoicing of these expenses requires a information of the customer by us regarding the obligation to pay for the quotation in advance.

5. Place of jurisdiction:

Our place of the registered head office is agreed as the place of jurisdiction for any current or future disputes arising from the contractual relation in the context of ordering from us maintenance, repair or other performances if the customer is a registered merchant for the purpose of legal provisions, a legal person under public law or a special fund under public law. Nevertheless, we are entitled to sue the customer also at his place of jurisdiction.