

Terms of Delivery and Payment

All services and statements of LUNOS Lüftungstechnik GmbH & Co. KG für Raumluftsysteme, hereinafter referred to as "User", are based upon the following terms and conditions. The inclusion of conflicting or supplementary clauses is hereby contradicted. An inclusion of deviating terms and conditions of the buyer, hereinafter referred to as "Orderer", requires the prior written consent of the User and shall always refer to the individual business transaction.

I. Quotations

Specific quotations customised to the Orderer's requirements shall be binding on the User for a period of one month from the date of submission; in this respect, an order confirmation shall not be required.

All further information regarding the User's goods as shown in catalogues, brochures, advertising material, illustrations, drawings etc. shall only be binding if expressly confirmed in writing in the individual case.

The User reserves the right to make design modifications as well as changes to the colour, shape and design of the products.

II. Prices

All prices are net prices without value added tax (VAT). The value added tax in the valid legal amount is to be paid in addition.

The prices valid on the day a quotation is submitted shall be applicable in all business transactions.

Price changes occurring after conclusion of the contract due to increases in prices, in particular of raw materials, wages, freight, customs duties and taxes, shall entitle the User to withdraw from the contract or - in the case of delivery deadlines of more than 4 months - to increase the prices.

The prices are ex works Berlin.

Packaging, freight and shipping costs, transport insurance and other incidental services shall be charged separately by the User and are to be borne by the Orderer.

III. Delivery period

As a rule, the delivery period shall be based on the delivery date confirmed in writing by the User. Should no delivery date be confirmed, delivery shall take place ex warehouse within up to 4 weeks after conclusion of the contract and thus after receipt of the Orderer's declaration of acceptance.

Delay in delivery shall only be deemed to have occurred if the Orderer has unsuccessfully granted the User a grace period of at least 14 days after expiry of the delivery period and if the User is responsible for the delayed delivery.

The assertion of claims for damages due to delay in delivery is excluded, unless the non-compliance with the delivery period was caused by wilful intent or gross negligence on the part of the User.

Compliance with the agreed delivery period is conditional upon the timely receipt of all documents to be supplied by the Orderer, the timely clarification of all preliminary questions in connection with the delivery as well as compliance with the agreed terms of payment and other obligations by the Orderer.

Force majeure, riots, strikes, lockouts, shortages of raw materials and power cuts both at the User's premises and at third-party plants on which production depends shall release the User from compliance with agreed delivery deadlines.

The User shall then be entitled in the individual case to withdraw from the contract in whole or in part free of charge, stating the reason and reimbursing any consideration already paid.

Deliveries before expiry of the delivery period and partial deliveries are permissible.

IV. Warranty

Obvious defects as well as wrong deliveries of any kind are to be asserted in writing by the Orderer immediately after receipt of the goods, in any case before processing, use or resale.

Should the Orderer not comply with this obligation, the goods shall be deemed to have been accepted as conforming to the contract.

In the case of non-obvious defects, the commencement of the period for immediate notification of defects shall be the date on which the Orderer had the possibility of becoming aware of the defect. After a period of one year the notification of non-obvious defects is excluded.

Warranty rights expire within two years after delivery of the goods.

The claiming of a guarantee possibly granted in individual cases is conditional upon the User's instructions with regard to the necessary maintenance and regular filter changes being complied with in accordance with the approval. The Orderer shall bear the burden of proof in this respect.

The Orderer's warranty claims are limited to the rights to rectification or replacement, whereby the defective purchased items are repaired or replaced at the User's discretion.

Only after rectification has finally failed and if delivery of the replacement has proved impossible shall the Orderer be entitled to withdraw from the purchase contract or to reduce the purchase price.

If the Orderer is an entrepreneur, it shall bear the costs for installation and removal in the event of subsequent rectification and replacement delivery.

V. Reservation of title

All deliveries and services shall remain the property of the User until complete and final payment of all claims. If the Orderer violates the contract, in particular in the event of unsatisfactory information about the Orderer's solvency and/or financial situation, imminent cessation of payments, default of payment and protests of bills of exchange or cheques, the User shall be entitled to demand the return of the reserved goods.

The goods reclaimed shall then be turned to account by freehand sale to the best possible extent and, after deduction of the costs, credited to the Orderer's liability.

The Orderer shall be entitled to resell the User's deliveries in the ordinary course of business, but not to pledge them or assign them as security; the Orderer shall assign to the User, already upon conclusion of the contract, all claims in the amount of the final invoice amount accruing to it from the resale against its customers or third parties, irrespective of whether the User's delivery has been resold without or after processing. The Orderer remains authorised to collect this claim even after the assignment. The right of the User to collect the claim itself remains unaffected. The User undertakes not to collect the claim as long as the Orderer meets its payment obligations from the proceeds received, is not in default of payment and, in particular, as long as no application for the opening of insolvency proceedings or similar has been filed and payments have not been suspended. If this is the case, the User may demand that the Orderer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtor of the assignment.

If the delivery is inseparably mixed with other objects not belonging to the User, the User shall acquire co-ownership of the new object in the ratio of the value of the object of sale to the other mixed objects at the time of the mixing.

The Orderer shall assign the claim from a resale or further processing of the reserved goods to the User, to the extent that the goods have been processed.

VI. Payment

Unless otherwise agreed in writing, the invoice amount is due immediately upon receipt of the delivery.

Incoming payments shall always be offset against the oldest claim in the order of costs, interest and principal claim.

If the Orderer is in default with a payment, all its payment obligations from the business relationship - including those for which a bill of exchange has been issued - shall become due for immediate settlement, unless the Orderer is not responsible for the default. Furthermore, the User shall be entitled to withdraw from contracts it has not yet fulfilled after the unsuccessful expiry of a grace period for payment of 14 days and the threat of withdrawal from the contract, and to invoice the Orderer for the expenses incurred up to that point.

The Orderer shall owe the User interest on arrears at the statutory rate in any case, whereby proof of higher damage, in particular through the use of a loan required in individual cases, shall remain unaffected.

VII. Liability

The User's liability for own faults or third party faults of his vicarious agents shall be excluded, unless the breach of duty has caused damage to life, limb and health for the Orderer. Liability for other damages, in particular consequential damages such as loss of production and loss of profit, shall be excluded if the User or his vicarious agents acted with simple negligence.

VIII. Data processing

The Orderer confirms that it has been separately informed by the User about the significance of data protection and the necessity of storing personal data in connection with the business relationship, including the rights to information and deletion. He expressly agrees to the storage and use of data by the User.

IX. Non-assignment clause

The Orderer's claims arising from the business relationship with the User may not be assigned to third parties.

X. Place of performance/jurisdiction

Place of performance shall be the User's place of business in Berlin.

Provided that the Orderer is a merchant, the court at the User's place of business, namely the Local Court of Spandau or the Regional Court of Berlin, shall have exclusive and final jurisdiction in all disputes in connection with the purchase contract specifically concluded between the parties.

XI. Binding force

Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions. Such invalid provisions shall be replaced with the presumed intention of the parties or, if this should not be ascertainable, the legal regulations.