

General Terms and Conditions of Sale and Delivery of HygroMatik GmbH for Humidification Systems and Facilities

- 1) Irrespective of whether your company (hereinafter “**Client**”) orders our equipment by telephone, in writing or via the Internet, we deliver and assemble our systems and facilities exclusively pursuant to the following terms and conditions. These apply, therefore, for the initial transaction and any subsequent transactions with Client. We do not accept any terms and conditions of Client that contradict or deviate from these unless we have consented to their applicability explicitly in writing. These terms and conditions shall apply even if we carry out the deliveries and services to Client without reservations, while having knowledge of contradicting or deviating terms and conditions of Client.
- 2) Any deviating agreements require written form and shall apply only to individual cases. This shall also apply to the agreement to deviate from the requirement for written form. Material statements and notices that are issued by the Parties, before or after conclusion of the contract (e.g. the setting of deadlines, warnings, declarations of rescission, warranties/guarantees) require written form to be valid.
- 3) Our offers, of whatever type or form, are merely requests to Client to make offers of its own. An offer to enter into a contract within the meaning of these terms and conditions is Client’s written (via letter, email, fax) order. The Client is bound to its order for four weeks. A contract is concluded through our acceptance of the order by means of a written confirmation.

The specifications we give in our non-binding offer are based on the information from Client. The illustrations, drawings, weight- and size information attached by us therefore become binding only upon conclusion of the contract and until then serve only as an aid to visualization; similarly, we retain the title and copyright thereto. The forwarding of these documents to third parties requires our written consent.

In making our non-binding offer, we rely on the completeness of the information given by Client in the project description and the accuracy of the technical data provided by it. We can neither take into account circumstances of which we are not aware nor later changes to the use of the equipment by the Client.

- 4) The price for the goods cited by us is “ex works” pursuant to Incoterms in their currently valid version, plus statutory value-added tax and packing costs. In the event of shipment at Client’s request, the latter will bear the shipping costs. The price for assembly agreed upon is an estimated price based on the information provided by the Client.

The invoicing for the delivery of our systems and facilities is done simultaneously with shipment. For the assembly of our equipment, the invoicing will be effected immediately after the installation is complete. The invoicing at the same time represents a declaration by us that we have fulfilled our obligations.

Payment must be made without deductions via transfer to our bank account shown in the invoice, within 30 days from invoice date. We allow a 2% discount if the money is received within 10 days of the invoice date unless any previous invoices are outstanding. Service invoices are always due immediately without deductions.

The Client has the right of set-off only if its counterclaims have been finally adjudicated, are uncontested, or have been acknowledged by us. Client may exercise a right of retention only to that extent as well.

- 5) Delivery “ex works” is deemed as agreed pursuant to Incoterms in their currently valid version, unless otherwise agreed in the individual case, for example if we have been instructed with the assembly as well.
- 6) To the extent that we have not been instructed with the assembly as well, delivery time is to be understood as the time between the conclusion of the contract and readiness of the goods in our warehouse. Upon request by Client, and at its risk and expense, we will arrange for transport. At Client’s request, too, we will also arrange for transport insurance, which we take out on behalf of Client and at its expense.
- 7) Delivery time is determined by means of a written agreement with Client. Our compliance with it is conditional on that all commercial and technical issues with Client have been clarified, and the latter has fulfilled all the obligations incumbent on it. Should this not be the case, the delivery time is extended accordingly. This shall not apply if we are responsible for the delay.

Compliance with the delivery time is subject to correct and timely deliveries from our own suppliers, to the extent that we have concluded a corresponding covering transaction with a supplier and are not responsible for the lack of or delay in that supplier’s delivery. We will inform Client immediately of the lack of or delay in delivery by a supplier. We will also inform Client immediately of the anticipated new delivery time. If delivery by our supplier can no longer be counted on (e.g. due to conduct in violation of a contract, insolvency or destruction of the supplier’s production site) or if the goods are not available even after expiration of the new delivery time, we shall be entitled to withdraw from the contract and will immediately refund any consideration paid by Client.

- 8) Client may invoke delays only to the extent it has completely fulfilled its own duties of payment or cooperation. Client is obligated to accept partial deliveries to the extent that these are reasonable for it.
- 9) To the extent that there is a defect in the delivery item, we may by way of subsequent performance at our discretion either repair the defect (subsequent improvement) or deliver a new, defect-free item (subsequent delivery).

Should our test reveal that the defect claimed did not in fact exist, Client shall bear the costs of our testing.

If the subsequent performance has failed, or a reasonable time period to be set by Client has expired unsuccessfully, or such period can be dispensed with according to statutory law, Client may rescind the contract or reduce the contractual price. For an

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insignificant defect, however, the remedy of rescission is not available.

Particularly in the following cases, Client shall have no rights resulting from defects: wear not attributable to a defect (ordinary wear and tear), unsuitable or improper use, defective assembly or commissioning by Client or third parties, improper or negligent handling, improper maintenance, unsuitable operating material, defective construction works, improper foundation ground, chemical, electro-chemical or electrical effects – unless we are responsible for these. Nor are we liable for errors that result from observance of Client's instructions, irrespective of whether these instructions have been made part of the contract or have been implemented at the request or direction of Client without explicit contractual foundation.

- 10) Client's claims for damages and compensation of useless expenditures against us, our corporate bodies and our legal representatives and/or performing or vicarious agents (*Erfüllungs- und Verrichtungsgehilfen*) (all hereinafter jointly "**HygroMatik**"), regardless of the legal basis, particularly for violation of contractual obligations and/or tort, are generally excluded.

This shall not apply to the extent that HygroMatik has acted with intent or gross negligence and/or in the event of violation of an obligation which goes to the root of the contract. An obligation goes to the root of the contract, if its performance is a condition for the proper performance of the contract and if the contractual partner as a rule trusts and may legitimately trust in its performance. In the event of unintentional and not grossly negligent violation of essential contractual obligations, the scope of the liability for compensation is limited to losses that are typical and foreseeable for such contracts.

The preceding limitations on liability shall not apply to the extent that HygroMatik bears compulsory liability, in particular under the Product Liability Act (*Produkthaftungsgesetz*), or for losses from injury to life, body or health, for claims based on malicious conduct and when assuming a guaranty for the characteristics of the delivered item.

- 11) All claims by Client against us, regardless of their legal basis, shall be time-barred 12 months after delivery of the delivered item. To the extent that an acceptance must take place, the limitation of actions begins with the acceptance. This shall not affect special statutory provisions for in-rem claims to return by third parties (Sec. 438 Par. 1 No. 1 German Civil Code), in the event of fraudulent intent by the seller (Sec. 438 Par. 3 German Civil Code) and for claims that assert recourse against the supplier in the event of final delivery to a consumer (Sec. 478, 479 German Civil Code). The limitation of actions pursuant to Sentence 1 shall also not apply to damages claims by Client that are based on intent or gross negligence, as well as to damages in cases in which we bear compulsory liability (Subsec. 10, Sub-clause 3). In such cases, the statutory limitations of actions shall apply exclusively.

- 12) We retain title to the delivered item until final payment of all invoices from the business relationship with Client; in the event of delay in payment, Client must return the delivered item to our agent upon request, and we may enter the premises in question for this purpose; we will invoice Client for the additional expenses of disassembly and return.

We do not consent to a transfer of title of our goods to third parties. Should seizures, confiscations or other dispositions be exercised by third parties, Client must inform us of this without undue delay and must provide all proof so that we can successfully assert our rights in an intervention proceeding; the costs of such intervention proceeding are to be borne by Client and, at our request, the latter must advance these to us.

- 13) Should one or several provisions of these terms and conditions or of a contract concluded based on these terms and conditions be or become wholly or partially invalid, unenforceable or unimplementable, the remaining provisions shall not be affected thereby. The Parties undertake that in place of the invalid, unenforceable or unimplementable provision, they will agree on a provision that most closely resembles what the Parties had intended based on the intent and purpose of the invalid, unenforceable or unimplementable provision. The same shall apply to any gaps in these terms and conditions or in the corresponding contract and in the event that the invalidity is based on the measure of performance or time; in such case, the measure allowed by law shall apply.

- 14) For our entire business relationship, solely the law of the Federal Republic of Germany shall apply, to the exclusion of private international law and the United Nations Convention on the International Sale of Goods (CISG). Place of performance for all claims and obligations is our headquarters in Henstedt-Ulzburg. Exclusive place of jurisdiction for all disputes arising from or in connection with delivery is Hamburg.

November 2011