

## General Terms and Conditions of Sale | mdexx fan systems GmbH

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### § 1 General

(1) The Terms and Conditions of Sale of mdexx fan systems GmbH (hereinafter referred to as: mdexx) shall apply exclusively; conflicting terms and conditions or terms and conditions of the purchaser that deviate from these Terms and Conditions of Sale shall not be recognized unless express written consent to their validity is given. These General Terms and Conditions of Sale shall also apply if the delivery to the customer is carried out without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from these Terms and Conditions of Sale. These General Terms and Conditions of Sale shall apply to all present and future orders for deliveries and other services. Written form within the meaning of these Terms and Conditions of Sale includes written and text form (e.g. letter, email, fax). Legal formal requirements and further proof, in particular in case of doubt about the legitimacy of the declaring party, shall remain unaffected.

(2) All agreements made between mdexx and the customer for the purpose of executing this contract must be recorded in writing in this contract. Orders placed orally or by telephone therefore require subsequent written confirmation by mdexx in order to be legally valid.

(3) These General Terms and Conditions of Sale shall only apply to entrepreneurs pursuant to § 310 para. 1 BGB (German Civil Code).

### § 2 Offer - offer documents

(1) If the order qualifies as an offer according to § 145 BGB (German Civil Code), mdexx may accept it within 2 weeks.

(2) mdexx reserves its unrestricted property and copyright rights of use and exploitation to cost estimates, drawings and other documents (hereinafter: documents). The Documents may only be made accessible to third parties with the prior consent of mdexx and must be returned to mdexx immediately upon request if the order is not placed with mdexx.

(3) The buyer has the non-exclusive right to use standard software and firmware with the agreed performance features in unchanged form on the agreed equipment. The buyer may make a backup copy of the standard software without express agreement.

### § 3 Prices - Terms of Payment

(1) Unless otherwise stated in the order confirmation, the prices shall be "ex works", excluding packaging; packaging shall be invoiced separately.

(2) In case of copper quotations higher than 1.50 €/kg, we shall charge a copper surcharge according to the specified copper input weight. The basis is the average quotation of the calendar month preceding the delivery.

(3) The deduction of a discount requires a special written agreement.

(4) If mdexx has taken over the installation or assembly and unless otherwise agreed, the buyer shall bear all necessary incidental costs such as travel and transport costs as well as allowances in addition to the agreed remuneration.

(5) Payments are to be made free mdexx's payment office.

(6) Unless otherwise stated in the order confirmation, the net purchase price (without deductions) shall be due for payment within 14 days from the invoice date. Mdexx shall be entitled to make a delivery in whole or in part only against advance payment. A corresponding reservation shall be declared by mdexx with the order confirmation at the latest. Otherwise, the legal regulations concerning the consequences of default of payment apply to delayed payments by the buyer.

(7) Incoming payments of the debtor are always to be settled according to § 366 para. 2 BGB

(8) The buyer is entitled to set-off rights only if his counterclaims have been legally established, are undisputed, or have been acknowledged by mdexx. Furthermore, the buyer is only authorized to assert a right of retention if the counterclaim results from the same contractual relationship.

- (9) In the event that the debtor is in default of payment of a claim, all other claims against the debtor may be called due; and
- (10) the debtor shall bear all fees, costs and expenses incurred by mdexx or a third party to whom mdexx has assigned a claim, arising from and in connection with successful collection proceedings against the debtor outside the Federal Republic of Germany.
- (11) mdexx is entitled to assign the claims to a third party.

#### § 4 Delivery Period

(1) The observance of deadlines for deliveries requires the timely receipt of all documents to be provided by the purchaser, necessary approvals and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the purchaser. If these prerequisites are not fulfilled in time, the deadlines shall be extended appropriately; this shall not apply if mdexx is responsible for the delay.

(2) If non-compliance with delivery periods by mdexx is due to

- a) force majeure, e.g. mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout),
- b) virus and other attacks by third parties on the IT system of mdexx, insofar as these occurred in spite of compliance with the care customary for protective measures,
- c) obstacles due to German, US-American or other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which mdexx is not responsible, or
- d) failure of mdexx to deliver on time or in the proper manner,
- e) pandemics or epidemics,
- f) export licenses not granted or not usable through no fault of mdexx,

mdexx shall inform the customer immediately and inform him of the expected new delivery period. If performance is also not possible within the new delivery period, mdexx is entitled to withdraw from the contract in whole or in part or to demand an adjustment of the contract in compliance with the principles of good faith.

(3) The occurrence of default in delivery by mdexx shall be determined in accordance with the statutory provisions. In any case, however, a reminder with a grace period of at least 2 weeks by the customer is required. If mdexx culpably fails to comply with this grace period as well, the buyer may, if he can credibly prove that he has suffered damage as a result, claim compensation for each full week of delay, beginning with the end of the grace period set, in the amount of 0.5% of the net price (delivery value), but in total not more than 5% of the delivery value of the delayed goods. mdexx reserves the right to prove that the buyer has not suffered any damage or only significantly less damage than the aforementioned lump sum.

(4) The buyer's claims for damages due to delayed delivery as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 shall be excluded in all cases of delayed delivery, even after expiration of a deadline for delivery set for mdexx. This does not apply as far as liability exists in cases of intent, gross negligence or due to injury to life, body or health. The buyer may withdraw from the contract within the scope of the statutory provisions only insofar as mdexx is responsible for the delay in delivery. A change of the burden of proof to the disadvantage of the buyer is not connected with the above regulations.

(5) If shipment or delivery is delayed at the request of the buyer by more than one month after notification of readiness for shipment, the buyer may be charged storage fees by mdexx in the amount of 0.5% of the price of the items of the deliveries for each additional month or part thereof, but not more than a total of 5%. The contracting parties are free to prove higher or lower storage costs.

## § 5 Transfer of risk

(1) Unless otherwise stated in the order confirmation, delivery is agreed to be "ex works" and at the risk of the Purchaser. The risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser when the goods have been dispatched or collected. This shall also apply in the case of carriage paid deliveries without installation or assembly. Acceptance of the goods must take place after completion. Delivery dates shall be observed as far as possible and are non-binding.

(2) Separate agreements shall apply to the return of packaging.

(3) If the buyer so desires, mdexx shall arrange for transport insurance for the delivery at the buyer's expense.

## § 6 Liability for defects

(1) The buyer may not refuse acceptance of deliveries due to insignificant defects. Claims for defects of the buyer presuppose that the buyer has duly fulfilled his obligations to inspect and give notice of defects according to § 377 HGB (German Commercial Code). mdexx shall furthermore not be liable for defects which are known to the buyer or unknown to him due to gross negligence. For material defects mdexx is only liable as follows:

(2) All those parts or services that have a material defect shall, at the discretion of mdexx, be repaired, redelivered or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk. If the type of supplementary performance chosen by mdexx is unreasonable for the customer in the individual case, he may reject it. The right of mdexx to refuse subsequent performance under the statutory conditions remains unaffected.

(3) Claims for supplementary performance become time-barred 12 months after transfer of risk; the same applies to withdrawal and reduction. This period shall not apply if longer periods are prescribed by law in accordance with §§ 438 para. 1 No. 2 (buildings and things used for a building), 479 para. 1 (right of recourse) and 634a para. 1 No. 2 (defects of a building) of the German Civil Code (BGB), in the case of intent, fraudulent concealment of the defect and non-compliance with a quality guarantee. The Purchaser's claims for reimbursement of expenses pursuant to Sec. 445a BGB (Seller's recourse) shall also become time-barred after 12 months from the passing of risk, provided that the last contract in the supply chain is not a purchase of consumer goods. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected.

(4) Notification of defects by the Purchaser shall be made in writing without undue delay.

(5) In the event of claims based on defects, payments by the Purchaser may be withheld to an extent that is in reasonable proportion to the material defects that have occurred. The Purchaser shall have no right of retention if its claims for defects are time-barred. If the notice of defects was unjustified, mdexx shall be entitled to demand compensation from the customer for the expenses incurred.

(6) If the third supplementary performance fails, the buyer can withdraw from the contract or reduce the remuneration without prejudice to any claims for damages according to No. 9.

(7) There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. If the Purchaser or third parties carry out improper modifications, installation/removal or repair work, there shall likewise be no claims based on Defect in respect of such work and the consequences thereof.

(8) The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies. This shall apply mutatis mutandis to the Purchaser's claims for reimbursement of expenses pursuant to Sec. 445a BGB (German Civil Code) (Seller's recourse), provided that the last contract in the supply chain is not a sale of consumer goods.

(9) Recourse claims of the purchaser against mdexx according to § 445a BGB (recourse of the seller) shall only exist insofar as the purchaser has not made any agreements with his customer exceeding the statutory claims for defects.

(10) Claims for damages of the buyer due to a material defect are excluded. This shall not apply in case of fraudulent concealment of the defect, in case of non-compliance with a quality guarantee, in case of injury to life, body or health and in case of intentional or grossly negligent breach of duty by mdexx. A change of the burden of proof to the disadvantage of the buyer is not connected with the above provisions. Further claims or claims of the buyer other than those regulated in this § 6 due to a material defect are excluded.

## § 7 Industrial property rights and copyrights – Defects in title

(1) Unless otherwise agreed, mdexx is obligated to provide the delivery only in the country of the place of delivery without infringement of industrial property rights and copyrights of third parties (hereinafter: property rights). If a third party raises justified claims against the buyer due to the infringement of property rights by deliveries made by mdexx and used in accordance with the contract, mdexx shall be liable to the buyer within the period stipulated in § 6 No. 3 as follows:

(a) mdexx shall, at its option and at its expense, either obtain a right of use for the deliveries concerned, modify them so that the property right is not infringed, or replace them. If this is not possible for mdexx under reasonable conditions, the customer shall be entitled to the statutory rights of rescission or reduction.

b) The obligation of mdexx to pay damages shall be governed by § 10.

c) The aforementioned obligations of mdexx exist only insofar as the buyer immediately notifies mdexx in writing of the claims asserted by the third party, does not acknowledge an infringement, and all defensive measures and settlement negotiations remain reserved for mdexx. If the buyer discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, he is obligated to point out to the third party that the discontinuation of use is not connected with an acknowledgement of an infringement of property rights.

(2) Claims of the Purchaser shall be excluded to the extent that the Purchaser is responsible for the infringement of the IPR.

(3) Claims of the buyer shall also be excluded if the infringement of property rights is caused by special specifications of the buyer, by an application not foreseeable by mdexx or by the fact that the delivery is changed by the buyer or used together with products not delivered by mdexx.

(4) In case of infringement of property rights, the provisions of § 6 No. 5, 8 and 9 shall apply accordingly to the claims of the buyer regulated in No. 1a).

(5) In the event of other defects of title, the provisions of Art. § 6 shall apply accordingly.

(6) Further claims or claims other than those regulated in this § 7 by the buyer against mdexx and its vicarious agents due to a defect of title are excluded.

## § 8 Reservation of performance

(1) The fulfillment of the contract is subject to the proviso that there are no obstacles due to German as well as other applicable national, EU or international regulations of foreign trade law as well as no embargos or other sanctions.

(2) The Customer shall be obliged to provide all information and documents required for the export, transfer or import.

## § 9 Retention of title

(1) The objects of the deliveries (reserved goods) shall remain the property of mdexx until all claims to which it is entitled against the buyer from the business relationship have been fulfilled. If the value of all security interests to which mdexx is entitled exceeds the amount of all secured claims by more than 20%, mdexx will release a corresponding part of the security interests at the request of the buyer; mdexx is entitled to choose between different security interests for the release.

(2) During the existence of the reservation of title, the buyer is prohibited from pledging or transferring ownership by way of security and resale is only permitted to resellers in the ordinary course of business and only under the condition that the reseller receives payment from his customer or makes the reservation that ownership is not transferred to the customer until he has fulfilled his payment obligations.

(3) If the buyer resells goods subject to retention of title, he already now assigns his future claims from the resale against his customers with all ancillary rights, including any balance claims, to mdexx by way of security, without the need for further special declarations. If the reserved goods are resold together with other items without an individual price having been agreed for the reserved goods, the buyer shall assign to mdexx that part of the total price claim which corresponds to the price of the reserved goods invoiced by mdexx.

(4) The buyer is permitted to process the reserved goods or to mix or combine them with other objects. The processing is done for mdexx. The buyer shall keep the resulting new object for mdexx with the diligence of a prudent businessman. The new object is considered reserved goods.

(5) The buyer and mdexx agree already now that in case of combination or mixing with other objects not belonging to mdexx, mdexx is in any case entitled to co-ownership of the new object in the amount of the share, resulting from the ratio

of the value of the combined or mixed reserved goods to the value of the other goods at the time of combination or mixing. To this extent, the new item shall be deemed to be reserved goods.

(6) The provision on the assignment of claims according to No. 3 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed reserved goods invoiced by mdexx.

(7) If the buyer combines the reserved goods with real estate or movable property, he also assigns to mdexx by way of security, without the need for further special declarations, his claim to which he is entitled as remuneration for the combination, including all ancillary rights, in the amount of the ratio of the value of the combined reserved goods to the other combined goods at the time of the combination.

(8) Until revoked, the buyer is authorized to collect assigned claims from the resale. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange, or justified indications of over-indebtedness or imminent insolvency of the buyer, mdexx is entitled to revoke the buyer's collection authorization. In addition, mdexx may, after prior warning and observance of a reasonable period of time, disclose the assignment by way of security, realize the assigned claims, and demand the disclosure of the assignment by way of security by the buyer to the customer.

(9) In the event of seizures, attachments or other dispositions or interventions by third parties, the customer must notify mdexx immediately. If a justified interest is substantiated, the buyer must immediately provide mdexx with the information necessary to assert its rights against the customer and hand over the necessary documents.

(10) In case of breach of duty by the buyer, in particular in case of default of payment, mdexx is entitled to withdraw from the contract in addition to taking back the goods after the unsuccessful expiration of a reasonable deadline set for the buyer to perform; the legal provisions regarding the dispensability of setting a deadline remain unaffected. The customer is obliged to surrender the goods. The taking back or the assertion of the reservation of title or the seizure of the reserved goods by mdexx shall not constitute a withdrawal from the contract, unless mdexx has expressly declared this.

#### § 10 Other Claims for Damages – Contractual Adjustment

(1) Unless otherwise regulated in these Terms and Conditions of Sale, claims for damages of the purchaser are excluded, regardless of the legal reason, in particular from culpa in contrahendo, due to breach of duties arising from the contractual obligation and from tort. This shall not apply insofar as mdexx is liable according to the Product Liability Act, in case of intent, gross negligence of owners, legal representatives or executive employees, in case of fraudulent intent, in case of non-compliance with an assumed guarantee or due to the culpable violation of an essential contractual obligation.

(2) Compensation for damages in the event of a breach of a material contractual obligation shall be limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases in No. 3 applies.

(3) A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.

(4) As far as the liability for damages against mdexx is excluded or limited, this shall also apply with regard to the personal liability for damages against employees, representatives and vicarious agents of mdexx.

#### § 11 Place of jurisdiction – place of performance

(1) If the customer is a merchant in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law, the place of business of mdexx shall be the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship; however, mdexx shall also be entitled to sue the customer at his place of business or at the place of performance of the delivery obligation according to these terms of delivery. The foregoing shall also apply to entrepreneurs in the sense of § 14 BGB (German Civil Code). Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

(2) The law of the Federal Republic of Germany shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(3) Unless otherwise stated in the order confirmation, the place of performance shall be the registered office of mdexx.

§ 12 Binding nature of the contract

The contract shall remain binding in its remaining parts even if individual provisions are legally invalid. This shall not apply if adherence to the contract would represent an unreasonable hardship for one party.

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*Please note that only the German text of these General Terms and Conditions of Sale is legally binding for the contractual relationship. The English version is merely for the purpose of information.*  
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