

General Terms and Conditions of Delivery and Service of ENVICON GmbH

1. Scope of application

These General Terms and Conditions of Sale and Delivery apply to all – including future – contracts with companies, entities governed by public law and special funds under public law on deliveries and services including contracts for work and the delivery of non-fungible goods between ENVICON GmbH (“ENVICON”) and its contractual party. These Terms and Conditions of Delivery and Service also apply, if ENVICON performs the delivery or the service without reservation with the knowledge of conflicting terms and conditions of the contractual party or ones that differ from these Terms and Conditions of Delivery and Service.

2. Contract conclusion and written-form requirement

2.1 The written order confirmation from ENVICON shall be definitive as far as the content and conclusion of a contract are concerned. The same shall apply to supplementations, amendments or subsidiary agreements to contracts already concluded. Drawings, figures, dimensions and other performance data shall only be binding for ENVICON when same are expressly referred to in the contract. The currently valid installation, operating and maintenance instructions as a part of the data sheet shall always be an integral part of the contract.

2.2 All agreements related to contract conclusion require a written agreement in order to be effective.

3. Scope and execution of the contractual services

3.1 In executing the orders awarded, ENVICON shall take as a basis and as being correct and complete, the facts stated by the contractual party, including but not limited to numerical data and the documents handed over. ENVICON shall not be obliged to check such documents and data for correctness, completeness and conformity with regulations unless

this obligation is expressly contractually accepted. ENVICON shall accept no responsibility for errors and ambiguities ensuing from the documents submitted by the contractual party.

3.2 ENVICON reserves the right to deviate slightly from the data and documents provided if the usability of the contractual service is not impaired as a result thereof.

4. Documents and objects of the contractual party, safe-keeping

Should the contractual party hand over to ENVICON documents for the execution of the contract, ENVICON shall keep same for a period of six months from the date of delivery for collection by the contractual party. During such time, ENVICON shall only be responsible for such care as it usually takes with its own matters. Upon expiry of six months and after granting an appropriate additional period of grace, ENVICON shall be entitled to destroy the documents or to dispose of same in another way.

5. Shipment, transfer of risk

5.1 Shipment is always effected on account and at the risk of the contractual party, unless otherwise agreed. The risk shall pass to the contractual party when the delivery has been handed over to the forwarder or carrier or has left the ENVICON warehouse for the purpose of shipment. This applies irrespective of which party assumes the freight costs.

5.2 To the extent that the contractual party wishes same, ENVICON shall cover the delivery by means of a transport insurance. The costs incurred insofar shall be borne by the contractual party.

5.3 Should the timely delivery of the contractual service be impossible for reasons for which ENVICON is not responsible, or should the contractual party wish a later delivery, ENVICON shall be entitled to invoice the contractual service. Should the contractual party be in default of acceptance or culpably violate its obligation to cooperate, ENVICON can demand reimbursements for the resulting damage including any additional expenses. Any further rights are reserved.

5.4 In the case of deliveries with installation and/or assembly, the risk shall pass to the contractual party upon acceptance, or on the day of refusal, for no reason, to accept. Putting into service is considered as acceptance.

6. Prices, discount, set-off, retention, assignment prohibition

6.1 Unless otherwise agreed, the prices stated by ENVICON shall be understood to be ex manufacturer's works, excluding packaging, loading and unloading, transportation, as well as installation and value added tax.

6.2 A discount may only be deducted if this has been stipulated in an additional written agreement.

6.3 The contractual party can only set off undisputed or legally binding claims against the claims by ENVICON. The contractual party may only assert any right of retention if its counter-claim is based on the same contractual relationship.

6.4 The assignment of claims against ENVICON is excluded.

7. Reservation of ownership

7.1 All delivered goods remain property of ENVICON (conditional commodity) until all claims are fulfilled, including but not limited to the respective balance claims which ENVICON is entitled to in connection with the business relationship (balance reservation). This also applies to future and contingent claims, e.g. from acceptor's bills of exchange, and even where payments are made in respect of specially designated claims. This balance reservation finally expires with the settlement of all claims outstanding at the time of the payment and included in this balance reservation.

7.2 The working on or processing of the conditional commodity is performed for ENVICON as manufacturer in terms of Section 950 of the German Civil Code (BGB) without obligation for ENVICON. The goods which have been worked on and processed are considered as conditional commodity in terms of paragraph 7.1. In case of processing, combination and

mixing of the conditional commodity with other goods by the contractual party, ENVICON is entitled to proportionate co-ownership of the new goods in relation to the invoice value of the conditional commodity compared to the invoice value of the other used goods. If the ownership by combination or mixing expires, at this moment, the contractual party already transfers its rights of ownership to ENVICON on the new stocks or the goods in the amount of the invoice value of the conditional commodity and stores them free of charge for ENVICON. The co-ownership rights of ENVICON are considered as conditional commodity in terms of paragraph 7.1.

7.3 The contractual party is entitled to resell the conditional commodity only in the ordinary course of business under its ordinary sales conditions, for as long as the contractual party is not in default, and provided that the claims generated by the resale according to paragraph 7.4 to 7.6 are assigned to ENVICON. The contractual party is not entitled to other dispositions of the conditional commodity.

7.4 The claims resulting from the resale of the conditional commodity are already assigned at this moment to ENVICON, together with all securities obtained by the contractual party for the claim. They serve in the same scope for security as the conditional commodity. If the conditional commodity is sold by the contractual party together with other goods, which have not been sold by ENVICON, ENVICON is assigned the claim from the resale in relation to the invoice value of the conditional commodity compared to the invoice value of the other sold goods. In the event that goods are sold of which ENVICON has shares of co-ownership according to paragraph 7.2, ENVICON is assigned a share corresponding to the share of co-ownership of ENVICON.

7.5 The contractual party is entitled to collect claims from the resale. This collection authorisation expires by revocation but at the latest with a default of payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. ENVICON intends to only exercise the right of revocation if, after the conclusion of the contract, it is recognisable that its payment claim according to this or other contracts with the contractual party is jeopardised by the contractual party's lack of solvency. On

ENVICON's request, the contractual party is obliged to inform its customers immediately about the assignment to ENVICON and submit the documents necessary for the collection to ENVICON.

7.6 The contractual party is obliged to inform ENVICON immediately in case of seizures or other impairments by third parties. The contractual party bears all costs which must be paid to cancel seizure or for return transport of the conditional commodity, unless they are replaced by third parties.

7.7 If the contractual party defaults in payment or fails to pay a bill of exchange, ENVICON is entitled to take back the conditional commodity, if necessary, to enter the premises of the contractual party for this purpose and to sell the conditional commodity by crediting the proceeds to the purchase price the best way possible. The same applies if, after the conclusion of the contract, it is recognisable that ENVICON's payment claim according to this contract or other contracts with the contractual party is jeopardised by the contractual party's lack of solvency. Provisions of the German Insolvency Code remain unaffected.

7.8 If the invoice value of the existing securities exceeds the secured claims including accessory claims (interest, costs, etc.) by more than 15 % in total, ENVICON is obliged to release securities of its own choice to this extent upon request of the contractual party.

8. Delivery or service period, fulfilment

8.1 The contractually agreed delivery or service period shall begin upon acceptance of the order by ENVICON and agreement on all details of the order. In the case of a contractual service without installation or assembly, it shall be deemed to have been observed if the contractual service has left the ENVICON warehouse within said delivery period or notification of the readiness for shipment has been given within said delivery period.

8.2 Should the delivery or service date be proven to be delayed in cases of force majeure such as war, fire, explosion, strike, or lockout at ENVICON or its suppliers, the delivery or service period is extended appropriately. ENVICON shall notify the contractual party of such

circumstances without delay. If the performance of the contract becomes unreasonable for one of the parties, it can withdraw from the contract.

8.3 Should an agreed delivery date be exceeded by more than three weeks, the contractual party may withdraw from the contract only when an appropriate additional period of grace set by it has elapsed unsuccessfully. Paragraph 8.1 and 8.2 remain unaffected.

9. Warranty

9.1 The service of ENVICON conforms to contract if it does not differ from or differs only insignificantly from the agreed quality at the time of the passage of risk. The conformity to contract and absence of defects of the service of ENVICON shall be measured solely according to the express agreements on quality and quantity of the goods ordered. Any liability for a specific application or specific fitness for use is only accepted if this has been explicitly agreed; otherwise, the risk for fitness for use and application is the sole responsibility of the contractual party. ENVICON shall not be liable for the deterioration or loss or inexpert treatment of the goods after the passage of risk.

9.2 Contents of the agreed quality and any intended application expressly agreed shall not establish any guarantee. The assumption of a guarantee shall require written agreement.

9.3 Unless otherwise expressly agreed, the products and services of ENVICON shall only be required to meet the statutory requirements applicable in the Federal Republic of Germany. In the case of use abroad, the contractual party undertakes to ensure that the products conform with the law applicable locally and the standard prevailing there and shall make any necessary adjustments at its own cost.

9.4 Unless otherwise expressly agreed, the contractual party alone shall bear responsibility for the integration of the products with regard to the technical, structural and organisational circumstances prevailing for the contractual party.

9.5 Warranty rights of the contractual party assume that it has duly fulfilled the duties of inspection and notification of defects owed under Section 377 of the German Commercial Code (HGB).

9.6 Claims based on defects shall not exist in the case of a merely insignificant deviation from the agreed quality, a merely insignificant impairment of usability, natural wear and tear and damage that arises after the passage of risk as a result of faulty or negligent treatment, excessive loads, unsuitable operating resources, deficient construction work, an unsuitable foundation or particular external influences that are not assumed under the contract. Claims based on defects shall accordingly in particular not exist if

- the wastewater contains substances harmful to the membrane;
- the air ducts leading to the diffusers are not sufficiently dimensioned according to the recognised rules of the art;
- the products were not stored in accordance with DIN 7716 and the installation and operating instructions for the products have not been followed.

If the contractual party or a third party undertakes improper repairs or modifications, no claims based on defects shall likewise exist for these or the consequences arising therefrom. Wearing parts are expressly excluded from the warranty unless these parts were already defective at the time of delivery. ENVICON will also not accept any liability for improper storage and inexpert installation.

9.7 In the event of objection, the contractual party shall give ENVICON opportunity to inspect without delay the goods to which objection is made. The goods to which objection is made or a sample of them must be made available to ENVICON on request at the expense of the contractual party. If the objections are unjustified, ENVICON reserves the right to charge the freight and cargo handling costs and the expenses of inspection to the contractual party.

9.8 Should the supplied goods, despite all care, have a defect that already existed at the time of the passage of risk, ENVICON will at its option improve the goods or supply replacement goods, subject to timely notification of the defect. ENVICON shall always be

given the opportunity to remedy within a reasonable period of time. Recourse claims remain entirely unaffected by this clause.

9.9 Claims of the contractual party on account of the expenses incurred for the purposes of remedy, including but not limited to costs for transport, travel, labour and material, are excluded if the expenses are increased by the fact that the goods supplied by ENVICON had subsequently been moved to a place other than the establishment of the contractual party, unless the move conforms to their intended purpose.

9.10 Recourse claims of the contractual party against us shall only exist to the extent that the contractual party has not reached any agreements with its customer that extend beyond the mandatory statutory claims based on defect, and to the extent that in its relationship with ENVICON the contractual party has duly fulfilled the duties of inspection and notification of defects owed under Section 377 of the German Commercial Code (HGB). Paragraph 9.9 shall apply mutatis mutandis for the scope of the recourse claim of the contractual party against ENVICON.

10. Liability and limitation

10.1 In case of a violation of contractual and non-contractual obligations, in particular due to impossibility, delay, default in negotiating the contract and tortious act, ENVICON is only liable – including for executives and any other servants or agents – in cases of intent and gross negligence, limited to such damage typical of the contract foreseeable on the conclusion of the contract.

10.2 These limitations do not apply in case of culpable breach of essential contractual obligations if the fulfilment of the purpose of the contract is endangered, in cases of mandatory liability according to the German Product Liability Act, culpable injury of life, limb or health and also not if ENVICON has fraudulently concealed defects in the goods or has given a guarantee for the quality of the delivered goods. The regulations regarding the burden of proof remain unaffected by this.

10.3 Unless otherwise specified in the foregoing provisions, any liability – also for defects and damage resulting from these defects, in particular damage not incurred to the object of the service itself, and for lost profit and loss of production – is excluded.

10.4 Unless otherwise agreed, contractual claims which the contractual party incurs against ENVICON due to or in connection with the delivery of the goods are statute-barred one year after the delivery of the goods. This period does not apply to those goods which, according to their normal purpose of use, are used in the construction of a building and which have caused the defectiveness of the construction, unless this purpose of use has been agreed upon in writing. ENVICON's liability due to deliberate or grossly negligent breach of duty, culpable injury of life, limb or health as well as the limitation of recourse claims according to Section 445b (1) of the German Civil Code (BGB) remain unaffected by the provisions of this paragraph 10.4.

11. Place of performance, legal venue, applicable law

11.1 The supplier works is the place of performance for deliveries by ENVICON in case of deliveries ex works, the ENVICON warehouse for all other deliveries. By choice of ENVICON, the ENVICON headquarters or the seat of the contractual party are the legal venue.

11.2 German law shall apply with respect to all legal relationships between ENVICON and the contractual party; application of the uniform UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

12. Effectiveness in the event of partial invalidity

12.1 Should any provisions of these General Terms and Conditions of Sale and Delivery be or become ineffective, the effectiveness of the remaining provisions shall not be affected as a result thereof.

12.2 As a result of these General Terms and Conditions of Sale and Delivery, all General Terms and Conditions of Sale and Delivery applicable earlier shall be set aside and replaced.



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