

Siempelkamp Industrial Fans GmbH's General Terms and Conditions

Siempelkamp Industrial Fans hereinafter

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## Siempelkamp Industrial Fans GmbH's General Terms and Conditions

### **I. General**

1.

All deliveries and performances by SIEMPELKAMP INDUSTRIAL FANS are subject to these terms and conditions and any other (separately agreed) contractual agreements. Any terms and conditions to the contrary by the customer will not become part of the contract as a result of SIEMPELKAMP INDUSTRIAL FANS accepting the order.

Contracts will only come into effect with the written acceptance of the order by SIEMPELKAMP INDUSTRIAL FANS.

2.

SIEMPELKAMP INDUSTRIAL FANS reserves the copyright and property rights in samples, estimates, drawings and similar information – also in the electronic versions of the above: they may not be made accessible to third parties. SIEMPELKAMP INDUSTRIAL FANS undertakes to only make information and documents that have been identified by the customer as confidential available to third parties with the customer's consent.

## II. Price and payment

1.

The prices apply ex SIEMPELKAMP INDUSTRIAL FANS works, including loading at SIEMPELKAMP INDUSTRIAL FANS's works, but excluding packaging and unloading at the destination, plus sales tax to the respective statutory amount.

2.

Payments must be made by the customer without any deductions into the account specified by SIEMPELKAMP INDUSTRIAL FANS in the following manner:

1/3 net immediately, i.e. after SIEMPELKAMP INDUSTRIAL FANS has dispatched the order confirmation;

1/3 net, i.e. as soon as SIEMPELKAMP INDUSTRIAL FANS has informed the customer that the main parts are ready for dispatch;

the remainder within 30 days net following the transfer of risk.

3.

The customer will only be entitled to withhold payments or to offset them against warranty claims to the extent that its counter claims are undisputed or have been established in a legally effective manner.

### III. Delivery time, delivery delay

1.

The delivery time will be determined in the agreements between the contract parties. SIEMPELKAMP INDUSTRIAL FANS will adhere to delivery times on condition that all commercial and technical questions have been clarified in agreement between the contract parties and the customer has fulfilled all its obligations, e.g. provision of official certificates or permits or has made the necessary advance payments.

The delivery time will be appropriately extended if it has not done so. This will not apply insofar as SIEMPELKAMP INDUSTRIAL FANS is responsible for the delay.

2.

Adherence to delivery deadlines depends on correct and punctual deliveries to SIEMPELKAMP INDUSTRIAL FANS.

3.

The delivery deadline will have been met when the delivery item has left SIEMPELKAMP INDUSTRIAL FANS's works or notification of readiness for dispatch has been provided by the time it passes.

If official acceptance is required – except in the event of justified refusal of acceptance – the acceptance date will be relevant, alternatively notification of readiness for acceptance.

4.

If the dispatch or acceptance of the delivery item is delayed for reasons for which the customer is

responsible, the costs resulting from the delay will be charged to the customer commencing one month after notification of the dispatch or acceptance readiness.

5.

The delivery time will be extended appropriately if the delivery deadline cannot be met for reasons due to force majeure or other events that lie beyond SIEMPELKAMP INDUSTRIAL FANS's control. SIEMPELKAMP INDUSTRIAL FANS will immediately inform the customer about the start and end of such circumstances.

6.

The customer may withdraw from the contract without previously setting a time limit if the entire performance finally becomes impossible for SIEMPELKAMP INDUSTRIAL FANS before the passing of risk. The customer may also withdraw from the contract if the execution of part of a delivery for an order becomes impossible and it has a justified interest in refusing the part delivery. The customer must otherwise pay the contract price for the part delivery. The same applies in the event of SIEMPELKAMP INDUSTRIAL FANS's incapacity. Section VII 2. will otherwise apply. If the impossibility arises while acceptance is being delayed or if the customer is solely or largely responsible for these circumstances, it will remain obliged to effect the counter performance.

7.

If SIEMPELKAMP INDUSTRIAL FANS's performance becomes delayed and the customer is able to prove that it has suffered loss as a result, it will be entitled to demand a flat compensation fee for delayed performance.

This fee will amount to 0.5% for each full week of the delayed performance but will not exceed a maximum of 5% of the value of that part of the total delivery that as a result of the delay cannot be used in accordance with the contract or that cannot be used on time.

If the customer sets SIEMPELKAMP INDUSTRIAL FANS a reasonable time limit after the due date to perform – while taking account of the legal exceptions – and if the time limit is not met, the customer will within the framework of the law be entitled to withdraw from the contract. Further claims based on delayed delivery will be determined exclusively in accordance with Section VII. 2 of these terms and conditions.

#### IV. Passing of risk, acceptance

1.

The risk will pass to the customer when the delivery item has left SIEMPELKAMP INDUSTRIAL FANS's works, this will also apply in the event of part deliveries being made or SIEMPELKAMP INDUSTRIAL FANS has assumed other performances, e.g. dispatch costs or deliveries and erection. Any required official acceptances will be relevant to the passing of risk. Such acceptances must be carried out immediately by the acceptance date, alternatively following SIEMPELKAMP INDUSTRIAL FANS's notice of readiness for acceptance. In the event of defects that are not significant, the customer may not refuse to provide acceptance.

2.

If dispatch or acceptance is delayed or is not effected as a result of circumstances for which SIEMPELKAMP INDUSTRIAL FANS cannot be held responsible, the risk will pass to the customer from the date notice was given of dispatch or readiness for acceptance. SIEMPELKAMP INDUSTRIAL FANS undertakes to conclude at the customer's cost the insurances that the customer demands.

3.

Part deliveries will be permitted as far as they are reasonable for the customer.

## V. Reservation of title

1.

SIEMPELKAMP INDUSTRIAL FANS reserves title in the delivery item (object) until all SIEMPELKAMP INDUSTRIAL FANS's claims arising out of the business relationship, including future claims, have been settled even if individual or all claims by SIEMPELKAMP INDUSTRIAL FANS have been included in current invoices and the balances have been drawn and recognised. In the event of non-contractual behaviour by the customer, SIEMPELKAMP INDUSTRIAL FANS will be entitled to take back the object after sending a corresponding reminder and the customer will be obliged to hand it over. In the event of its taking the object back or its seizing it, SIEMPELKAMP INDUSTRIAL FANS will be deemed to have withdrawn from the contract only if SIEMPELKAMP INDUSTRIAL FANS has declared that it has done so in writing. The customer may not pledge the item or use it as collateral without SIEMPELKAMP INDUSTRIAL FANS's consent. The customer must immediately inform SIEMPELKAMP INDUSTRIAL FANS in writing in the event of seizures or other interventions by third parties.

2.

The customer may sell the item during the course of ordinary business. It is already assigning all claims to the value of the invoice to which the sale entitles it against the purchaser or third parties to SIEMPELKAMP INDUSTRIAL FANS as collateral, irrespective of whether the item was sold with or without processing. The customer may collect this claim even after it has been assigned. SIEMPELKAMP INDUSTRIAL FANS's authorisation to collect the claim itself remains unaffected by the above. SIEMPELKAMP INDUSTRIAL FANS, however, undertakes not to collect claims as long as the customer meets its payment obligations. SIEMPELKAMP INDUSTRIAL FANS may demand that the customer provide it with all the information necessary to collect the claims, hand over the related documents and inform the debtors of the assignment. If the object is sold with other goods that do not belong to SIEMPELKAMP INDUSTRIAL FANS, the customer's claim against the purchaser will be deemed to have been assigned to the amount of the delivery price agreed between SIEMPELKAMP INDUSTRIAL FANS and the customer.

3.

The customer always carries out the processing of or modifications to the object on behalf SIEMPELKAMP INDUSTRIAL FANS. If the object is processed with other items that do not belong to SIEMPELKAMP INDUSTRIAL FANS, SIEMPELKAMP INDUSTRIAL FANS will acquire joint ownership in the new object to the ratio of the value of the object in which title has been reserved and that of the other processed items at the time of processing. If SIEMPELKAMP INDUSTRIAL FANS objects are combined with other movable items into a single object and the other object is to be regarded as the main object, the customer will transfer joint ownership to the value of the invoiced amount insofar as the main object belongs to the customer. The same will apply as for the object in which title has been reserved to the object created through processing or modification. The customer will keep the property or jointly owned property safe for SIEMPELKAMP INDUSTRIAL FANS. SIEMPELKAMP INDUSTRIAL FANS will release the collateral to which it is entitled to the extent that its value exceeds the value of the claims being protected, insofar as they have not yet been settled, by more than 20%.

4.

SIEMPELKAMP INDUSTRIAL FANS will be entitled to insure the delivery item against theft, fire, water and other damage at the customer's cost insofar as the customer has not already verifiably taken out such insurance policy itself.

## VI. Warranty claims

SIEMPELKAMP INDUSTRIAL FANS will on exclusion of any other claims and on condition of Section VII, provide a warranty for defects in title and material defects in the delivery as follows:

### Material defects

1.

All those parts that turn out to be defective as a result of a circumstance obtained before the passing of risk will at SIEMPELKAMP INDUSTRIAL FANS's discretion be repaired or replaced. SIEMPELKAMP INDUSTRIAL FANS must be immediately informed in writing when such defects are discovered. Replaced parts will immediately become the property of SIEMPELKAMP INDUSTRIAL FANS.

2.

The customer must in consultation with SIEMPELKAMP INDUSTRIAL FANS make available the required time and opportunity to carry out all repairs and replacements that appear necessary to SIEMPELKAMP INDUSTRIAL FANS; otherwise SIEMPELKAMP INDUSTRIAL FANS will be relieved of liability for the resulting consequences. Only in urgent cases where operational safety or the prevention of disproportionately serious damage is concerned, whereby SIEMPELKAMP INDUSTRIAL FANS must be immediately informed accordingly, will the customer be entitled to remedy the defect or have it remedied by third parties or to demand reimbursement of the necessary expenses from SIEMPELKAMP INDUSTRIAL FANS.

3.

Of the costs incurred for repair or replacement – insofar as the complaint turns out to be justified – SIEMPELKAMP INDUSTRIAL FANS will bear the costs for deployment and dispatch. SIEMPELKAMP INDUSTRIAL FANS will also bear the dismantling and installation costs as well as the costs for any deployments of required fitters and helpers, including travelling costs, insofar as this does not constitute a disproportionate burden on SIEMPELKAMP INDUSTRIAL FANS.

4.

The customer will within the framework of statutory regulations be entitled to withdraw from the contract if SIEMPELKAMP INDUSTRIAL FANS – while taking account of the statutory exceptions – allows a reasonable time limit that it has been set for the repair or replacement delivery due to a defect to pass to no avail. In the event of defects that are insignificant, the customer will only be entitled to reduce the contract price. The right to reduce the contract price will otherwise remain excluded. Further claims will be determined in accordance with Section VII. 2 of these terms and conditions.

No warranty will be granted particularly in the following cases:

- Unsuitable or improper use,  
incorrect assembly or commissioning by the customer or third parties
- Natural wear, incorrect or negligent treatment
- Incorrect maintenance
- Unsuitable operating resources
- Inadequate construction work,  
Unsuitable building ground,  
chemical, electrochemical or electrical effects  
to the extent that SIEMPELKAMP INDUSTRIAL FANS is not responsible for them.
- There will be no liability for the consequences of incorrect repairs carried out by the customer or third parties. The same applies to modifications to the delivery item carried out by the customer without SIEMPELKAMP INDUSTRIAL FANS's prior consent.

## Defects in title

1.

If the use of the delivery item results in the violation of domestic industrial property rights or copyrights, SIEMPELKAMP INDUSTRIAL FANS will at its cost and as a general principle procure the right of use for the customer or will modify the delivery item for the customer in such a way that the industrial property right is no longer being violated. The customer will be entitled to withdraw from the contract if this is not possible at economically appropriate conditions or within an appropriate time limit. SIEMPELKAMP INDUSTRIAL FANS will also be entitled to withdraw from the contract under such conditions. SIEMPELKAMP INDUSTRIAL FANS will also indemnify the customer from claims that are undisputed or that have been determined in a legally effective manner that are being made by the owners of the industrial property rights concerned.

2.

SIEMPELKAMP INDUSTRIAL FANS's duties mentioned in Section VI.5 are on condition of Section VII.2 final in the event of industrial property right and copyright violations.

They will exist only if:

- the customer immediately notifies SIEMPELKAMP INDUSTRIAL FANS of claims made on the basis of violations of industrial property rights and copyrights.
- the customer supports SIEMPELKAMP INDUSTRIAL FANS to an appropriate extent in defending against claims being made or makes it possible for SIEMPELKAMP INDUSTRIAL FANS to carry out the modifications in accordance with Section VI.5.
- all defensive measures, including out-of-court settlements, remain reserved for SIEMPELKAMP INDUSTRIAL FANS.

- the defect in title is not due to an instruction by the customer.
- the infringement was not caused by the customer independently modifying the delivery item or using it in a non-contractual way.

## VII. Liability

1.

If the delivery item cannot be used by the customer in accordance with the contract and SIEMPELKAMP INDUSTRIAL FANS is to blame for this as a result of omitted or erroneous execution of provided confirmations or suggestions made before or after the conclusion of the contract or through the breach of other secondary contractual obligations – particularly instructions for operating or maintaining the delivery item – the provisions of Sections VI and VII.2 will apply accordingly on exclusion of any further claims by the customer.

2.

SIEMPELKAMP INDUSTRIAL FANS will be liable for damage that the delivery item itself has not suffered, irrespective of the legal reasons, only in the event of:

- intent,
- gross negligence by the proprietor / organs or executive employees,
- culpable injury to life, limb, health,
- defects that SIEMPELKAMP INDUSTRIAL FANS maliciously concealed and that SIEMPELKAMP INDUSTRIAL FANS guaranteed did not exist,
- defects in the delivery item to the extent that the product-liability law specifies liability for injuries or damage to privately used items.

In the event of the culpable breach of contractual duties, SIEMPELKAMP INDUSTRIAL FANS will also be liable for gross negligence by non-executive employees and for minor negligence. In the latter case, limited to the contract-typical, reasonably foreseeable damage.

Further claims are excluded.

### **VIII. Period of limitation**

All the customer's claims – irrespective of the legal reasons on which they are based – will lapse within twelve (12) months. The statutory time limits will apply to compensation for damages in accordance with Section VII.2 a) to e). They will also apply to defects in a building or for delivery items that were used in a building in accordance with their usual method of use and which have caused the building to become defective.

### **IX. Use of software**

To the extent that software is included in the scope of delivery, the customer is being granted a non-exclusive right to use the supplied software and its documentation. It is provided for use on the accordingly intended delivery item. It is prohibited to use the software on more than one system.

The customer may only duplicate, revise and translate the software or convert its object code to source code within the legally permissible framework (Paragraphs 69 a ff Urhebergesetz (UrhG – German Copyright Law).

The customer undertakes not to remove manufacturer information – particularly copyright notices – or alter it without prior express consent from SIEMPELKAMP INDUSTRIAL FANS.

All other rights to the software and the documentation, including copies, remain with SIEMPELKAMP INDUSTRIAL FANS or the software supplier. It is prohibited to award sub-licences.

### **X. Applicable law / place of jurisdiction**

1.

German law applies exclusively to all legal relationships between SIEMPELKAMP INDUSTRIAL FANS and the customer on the express exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2.

The place of fulfilment is the location of SIEMPELKAMP INDUSTRIAL FANS's registered offices.

3.

The place of jurisdiction is the location of the court responsible for the registered offices of SIEMPELKAMP INDUSTRIAL FANS.

SIEMPELKAMP INDUSTRIAL FANS will, however, be entitled to take action at the location where the customer's main offices are based.

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