

 <p><b>UGN</b> UMWELTECHNIK</p> <p>Ein Unternehmen der Rietzler-Gruppe</p>	<p><b>Terms and Conditions</b></p>	<p><b>FB-GF-01</b></p> <p>Form Date of Revision: 02-08-2016 Page 1 of 7</p>
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UGN-Umwelttechnik GmbH is an environmental service provider and system manufacturer specializing in biological and chemical exhaust air purification.

UGN is a wholly owned subsidiary of Rietzler Gruppe GmbH.

## § 1 Scope, Applicable Law, Writing

1. UGN-Umwelttechnik GmbH (hereinafter: UGN) provides products and services solely under the following terms and conditions. These terms and conditions also apply for all future business between the contract parties, without explicit note of this being necessary. These terms also apply if not explicitly referred to by UGN in a later contract, and they also apply in particular if UGN renders performance with full knowledge of conflicting or different terms and conditions of Buyer without any reservation of rights.
2. Buyer's reference to his own terms and conditions is hereby rejected. UGN does not, by contract fulfilment without reservation of rights or otherwise, acknowledge terms and conditions of Buyer that are conflicting with, or different to, UGN's own terms and conditions.
3. Collateral agreements are only valid when confirmed in writing by UGN.
4. The legal relationship between Buyer and UGN, including the issue of their coming into existence, shall be governed solely by the laws of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and excluding German private international law.
5. The English version of these Terms and Conditions is a translation of the original German version and is for information purposes only. The German version of these terms and conditions shall take precedence over the English version and is binding in case of doubt.

## § 2 Offer, Acceptance of order

1. Offers and contract agreements must be made in writing by mail or telefax; they may also be coordinated by email.
2. Every offer shall be valid for a duration 3 months as of the date of its creation, if no other duration was agreed upon in writing. The offer must be accepted in writing by submitting a declaration of acceptance.
3. UGN reserves all titles and copyrights to figures, drawings, cost estimates, and other provided documents. Buyer must not disclose these documents to Third parties without prior written consent by UGN. The offers include all drawings and documents made available to Buyer by UGN.

If Buyer does not accept the offers made by UGN all documents mentioned above must be returned, or destroyed, or deleted, by Buyer within 4 weeks.

4. Section 3 applies to Buyer's documents accordingly. These documents, however, may be made available without Buyer's prior written consent to those Third parties who are permissibly assigned with the provision of products and services by UGN.

5. UGN reserves the right of making design, or similar, modifications that deviate from the order confirmation if these modifications do not restrict the intended use according to the agreement in a way that is not acceptable by Buyer.

Necessary safety devices are included in the scope of delivery only to the extent that is mandatory or expressly agreed upon.

## **§ 3 Order processing**

### **§ 3.1 Delivery time**

1. All delivery and performance times are stated assuming that Buyer provides all necessary documents, payments, and other obligations to UGN in due time, including but not limited to, documents, necessary permits and releases, clarification and approving of plans in due time, settlement of all technical issues, fulfilling of agreed payment conditions. Otherwise, the delivery and performance time shall commence upon fulfilment of the conditions stated above.
2. For contracts including system setup or installation, the agreed delivery and performance time is fulfilled when the system is delivered and set up or installed within the agreed time period.

For contracts without system setup or installation included, the agreed delivery and performance time is deemed fulfilled when the operational system is shipped for delivery or picked up within the agreed time period.

If shipment is delayed due to circumstances for which Buyer is responsible the delivery and performance time is deemed fulfilled if UGN notifies Buyer that the products are ready for shipment within the agreed time period.

3. If non-fulfilment of agreed delivery and performance time by UGN is proven to be caused by mobilization, war, riots, strike, lockout, or other not reasonably foreseeable circumstances the delivery and performance time is extended accordingly.
4. The Buyer's right to withdraw after a reasonable supplementary performance time set by UGN is expired in vain remains unaffected
5. If delivery and performance are delayed at Buyer's request UGN may issue the final invoice and ask for reasonable part payment.

Beyond that UGN is entitled to charge a separate storage compensation as of the second month after giving notice of the products being ready for shipment. This storage compensation amounts to 0.5% of the final invoice amount per month or part thereof.

### **§ 3.2 Transfer of Risk, Acceptance**

1. For contracts without system setup or installation included, the risk is transferred to Buyer as soon as the operational system has been shipped or picked up.

UGN takes out a freight insurance that covers damage of the goods due to breakage, transport, or fire, during shipment at Buyer's cost.

Such a freight insurance is mandatory unless Buyer has noticed UGN in writing about his waiving of the insurance.



2. For contracts including system setup or installation, the risk is transferred to Buyer as soon as the goods are handed over on the Buyer's premises. For contracts including system installation upon delivery, the risk is transferred to Buyer after the installation of the system is completed.
3. If delivery or installation is delayed upon Buyer's request, or for reasons within Buyer's responsibility, the risk is transferred to Buyer upon start of the delay. UGN is obliged to take out insurances at Buyer's request and cost.
4. Buyer must receive all items that are delivered even if they have minor defects. UGN can make partial shipments if not agreed otherwise.

### **§ 3.3 Installation, Maintenance**

1. Buyer must create the technical conditions necessary for setup, storage, and installation at his own expenses.

This may include:

- Preliminary works to be performed by Buyer,
  - Construction works,
  - Routing supply lines,
  - 230 V power supply for installation equipment,
  - Oral or written permit for installation on site,
  - Vehicle access authorization for loading and unloading near installation site,
  - Parking space for installation vehicle,
  - Appropriate lifting equipment with sufficient load and jib capacity,
  - Contact person on site.
2. In the event of delay of installation, or commissioning, due to circumstances outside UGN's control, Buyer must bear the additional time and travel costs of the installation staff.
  3. UGN shall not be liable for works done by his own installation staff, or other agents, that are not linked to setup and installation, or were initiated upon Buyer's request.
  4. Buyer shall remunerate UGN the bonuses agreed for overtime and work performed on Sundays, holidays, and during night hours, as well as for prior planning and monitoring. UGN may charge increased rates for installation and works in adverse conditions. Travel cost, per diem, rest and holidays are subject to separate remuneration.
  5. Maintenance works are not covered by the delivery contract and are the subject of a separate contract.

### **§ 3.4 Reservation of Title**

1. UGN reserves title to the delivered products until all obligations of the Buyer from the delivery contract are fulfilled. UGN is entitled to have the delivered products returned in case of breach of contractual obligations, and in particular in the event of delayed payment.

The return of the delivered product shall not constitute a withdrawal from the contract unless explicitly stated otherwise in writing.

2. If Buyer is an entrepreneur as stated in §14 BGB (Unternehmer acc. to German civil code) the reservation of title is extended until all open payments from the business relation with Buyer are settled.
3. For the time the title to the delivered products is reserved, any pledging, mortgaging, or transfer of ownership to Third parties by Buyer is not allowed. Buyer may resell the products only in the normal course of business provided that Buyer assigns all claims including VAT resulting from that resale to UGN. The claims shall be considered assigned upon conclusion of the contract between UGN and Buyer, regardless of whether the delivered product was processed or not before resale.

Buyer remains entitled to enforce such claims even after assigning them to UGN. This does not affect UGN's right to enforce the claim themselves, however, UGN undertakes to refrain from enforcing such claims provided that Buyer complies with his payment obligations, payments are not stopped, and no application for opening insolvency proceedings is filed. Upon request, Buyer must disclose all assigned claims and the respective debtors, provide all information necessary for enforcing the claims, hand over the relevant documents, and inform Third-party debtors of the assignment of the claim. Any processing or modification of the purchased item by Buyer is always done on behalf of UGN.

4. Buyer is obliged to inform UGN immediately of Third-party enforcement measures relating to items subject to UGN's retention of title.

### **§ 3.5 Termination of Contracts, Right to Remuneration**

1. In case of withdrawal from contract, termination, challenge, or revocation, UGN is entitled to compensation for all expenses incurred up to this point, and to remuneration according to the actual time and effort. UGN may generalize the compensation for time and effort as well as the remuneration on an individual or a collective basis, and claim up to 20% of expenses, or remuneration, which would have been charged for the entire order.

## **§ 4 Invoice and Payment Terms**

### **§ 4.1 Invoice, Price Adjustment, Terms of Payment**

1. The UGN prices excluding setup or installation shall apply ex works if not agreed otherwise. The packaging is not included and may be invoiced separately.
2. UGN reserves the right to adjust prices if an increase in costs occurred after a period of four months from signing the contract. In particular, this includes increased labour costs due to collective agreements, and increased material prices. UGN will provide evidence of such increased costs if requested to do so by Buyer.
3. If Buyer is an entrepreneur as stated in §14 BGB (Unternehmer acc. to German civil code) the time period stated in Section 2 is reduced to six weeks from signing the contract.
4. Discount may only be deducted if agreed in writing.
5. Invoices are due within 14 days after receipt without deduction. If Buyer fails to settle the invoice within this period of time, this will be considered default of payment according to § 286 Abs. 3 BGB (German civil code).

In the event of default of payment on Buyer's part UGN is entitled to claim default interest according to § 288 BGB (German civil code). UGN is entitled to claim higher damage due to that payment default if UGN is able to provide evidence of such damage. The Buyer may, however, prove that such payment default has caused no or substantially lower damage.

6. The prices stated by UGN do not include VAT. VAT is stated separately in the applicable amount on the day of invoicing.
7. Payment is to be made to UGN's designated account without deductions.
8. If Buyer is not an entrepreneur as stated in §14 BGB (Unternehmer acc. to German civil code) Buyer is entitled to terminate the contract in the event of a price increase by more than 5%. In this case, the price includes VAT.

### **§ 4.2 Offsetting, Retention, Right to Refuse Performance, and Non-Assignment**

1. Buyer can only offset such claims that are uncontested, or have been legally established, or are recognized by UGN.  
  
Buyer may execute his right to refuse performance only if his counterclaim is based on the same contract.
2. In case of legitimate doubts regarding Buyer's ability to pay UGN has the right to suspend performance unless an advance payment is made or outstanding invoices are settled, regardless of originally agreed payment terms.
3. Buyer's claims may only be assigned with written consent of UGN.



## **§ 5 Liability**

### **§ 5.1 Liability for Defects**

1. If a product turns out unusable, or if the usability of a product is severely impaired due to circumstances occurring before transfer of risks, such as inferior material or poor execution, UGN must in their sole discretion rework this product or deliver a new identical product. If such defects are identified, UGN immediately must be informed in writing.
2. Normal wear and tear, and defects found after transfer of risks and that are due to improper use or negligent treatment, excess use, inadequate supplies, or such chemical, electro-chemical, biochemical, or electric influences that were not assumed in the contract, are excluded from the defects liability.

The same applies for improper repair, installation, assembly, maintenance, and service done by Buyer or Third parties. This is to be assumed in the case that repair, installation, assembly, maintenance, and service at Buyer's request were not done by UGN, or a Third-party service provider authorized in writing by UGN, or when Buyer did not stick to the maintenance intervals stipulated by UGN.

3. If defects are to be remedied under this liability clause UGN accounts for all necessary effort. In particular, this includes transport, travel, labour, and material costs provided that moving the product to a place other than the place of performance does not lead to an increase in costs. The maximum liability of UGN shall not be in excess of the purchase price.
4. Buyer must allow UGN reasonable time and opportunity to remedy the defect. To this end, appropriate arrangements shall be made with UGN. If Buyer refuses to make such arrangements, UGN is no longer liable for the defect.


If UGN is not prepared for, or not capable of, remedying the defect or providing sufficient replacement the defect remedy period is extended beyond the appropriate term due to reasons within UGN's responsibility. If UGN repeatedly fails to remedy the defect Buyer is entitled to request a purchase price reduction, or to take additional measures not exceeding the purchase price, or to withdraw from the contract.

5. Buyer's claims beyond that are excluded regardless of the legal grounds. In particular, this includes compensation claims for damage to other items than the delivered product, for loss in profit, and other financial losses incurred by Buyer. The above mentioned does not apply, however, if liability is on the grounds of gross negligence by UGN, or if UGN is liable for the lack of warranted qualities.
6. Certain qualities require written confirmation by UGN to be warranted.
7. In case of negligent breach of essential contractual obligations by UGN liability is limited to foreseeable damage.
8. Sections 1 through 7 also apply for such claims for rework, replacement, or damages brought forward by the Buyer that are caused by proposals, or advice in connection with the contract, or by infringement of contractual secondary obligations.

### **§ 5.2 Impossibility, Adaptation of Contract**

1. If the economic relevance or the content of the shipment is changed significantly due



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to unforeseen events in the meaning of § 3.1, Section 3, or if such events have a significant impact on UGN's operations, the contract shall be adapted in good faith.

2. If an adaption of the contract is unreasonable UGN is entitled to withdraw from the contract. If UGN intends to exercise its right of withdrawal from the contract UGN must inform Buyer immediately upon becoming aware of the scope of such event, regardless of whether or not an extension of delivery time was agreed upon with Buyer.

### **§ 5.3 Total Liability, Other Compensation Claims**

1. The total liability is limited to the extent stated in § 5.1. In particular, this includes all compensation claims for damage resulting from breach of contractual primary and secondary obligations, and products liability claims.
2. Section 1 does not apply, however, if liability is based on intent, or gross, negligence of UGN or any of UGN's representatives or agents. The same applies for initial inability, impossibility and claims on the basis of the German Act on Liability for Defective Products (Produkthaftungsgesetz) insofar as liability is mandatory according to this act.
3. Insofar as UGN's liability is excluded or limited, the same applies for liability of UGN's staff, employees, personnel, workers, agents, and representatives.

### **§ 6 Place of Performance, Court of Jurisdiction**

1. The place of performance and sole court of jurisdiction for all claims between UGN and merchants, or legal entities, or public separate estate defined by public law, is UGN's headquarters. However, UGN is also entitled to file a lawsuit against a Buyer at Buyer's court of jurisdiction.
2. Section 1 also applies if Buyer moves his place of residence or his usual place of abode outside the jurisdiction of the Federal Republic of Germany, or Buyer's place of residence or his usual place of abode are not known by the time the law suit is filed.