

# ENERVENT ZEHNDER OY GENERAL TERMS OF SALE 11/2017

## 1 APPLICATION

These general terms and conditions of sale of Enervent Zehnder Oy ("Enervent Zehnder") shall be applied unless otherwise agreed upon in writing between the contracting parties, both with regard to a purchaser's order placed with Enervent Zehnder and to the business relationship of the parties after the order. If the purchaser has presented a condition in the order which conflicts with these terms of sale, these terms of sale, however, will primarily be applied, even if Enervent Zehnder would not have provided an objection in response to such a condition by the purchaser.

## 2 OFFER

Enervent Zehnder Zehnder's offer will remain valid until the expiration date provided in the offer. Unless otherwise separately mentioned, the validity of the offer is thirty (30) days from its date.

The offer and related pictures, drawings, calculations and other documents with related rights are the property of Enervent Zehnder. The recipient of the offer does not have the right to use these documents to the detriment of Enervent Zehnder or disclose any information about them to third parties or utilize any tailored technical solution included in the offer.

The price of the offer is based on the information and amounts provided in the call for bids or otherwise provided by the purchaser. If the purchaser's order does not match the provided information or amounts, or if issues or conditions beyond the control of Enervent Zehnder so dictate, Enervent Zehnder shall have the right to amend the terms of delivery or the price in accordance with the final information. The purchaser is liable for the validity of information it has provided with regard to the product, its purpose of use and the order.

## 3 THE ORDER AND THE AGREEMENT

An order made in accordance with the offer and received during the offer's time of validity constitutes the agreement between Enervent Zehnder and the purchaser. In orders other than those based on the offer, the purchaser's offer will bind Enervent Zehnder only after Enervent Zehnder has accepted such an order. Upon request, Enervent Zehnder will send the purchaser an order confirmation.

Enervent Zehnder is not liable for any incorrect delivery based on an orally provided order, unless the purchaser has confirmed the order in writing before the delivery or start of manufacturing. When the purchaser's order differs from Enervent Zehnder's order, the agreement shall be considered to have been made in accordance with the terms of Enervent Zehnder's offer, unless Enervent Zehnder has confirmed otherwise in writing. It is the purchaser's responsibility to check the validity of the order confirmation.

## 4 MATERIALS AND TOLERANCES

Only the material requirements and limit values (tolerances) determined by Enervent Zehnder in the technical specifications and related standards determined in the agreement on the product's order shall be applied to the product. The material requirements, standards and limit values (tolerances) of special products manufactured in accordance with customer requirements will always be determined in connection with the call for bids or the order. Enervent Zehnder is responsible for ensuring that the delivered product matches the agreed material requirements and limit values. Unless otherwise agreed upon on tolerances, the product-specific tolerances generally applied by Enervent Zehnder will be used. Enervent Zehnder shall be liable for the product's quality and other features only in accordance with information set forth in the agreement and as otherwise provided by Enervent Zehnder in writing on the relevant product. Unless specifically agreed otherwise, the prerequisite for the validity of compliance specified for a product by Enervent Zehnder or agreed for the product, is that the building or environment where the product has been installed, must fulfil the requirements set forth in applicable laws, regulations, ordinances by the authorities and instructions and generally accepted construction methods. If required, the product's conformity will be indicated in accordance with field tests implemented by Enervent Zehnder and a third party, such as VTT.

## 5 MATERIAL DELIVERED FOR SPECIAL PRODUCTS BY THE PURCHASER

Any material included in special products and supplied by the customer must be delivered ex works at Enervent Zehnder's factory at the agreed time. The total number of parts in the case of serial products must exceed the total order amount by five (5) per cent. The purchaser is responsible for ensuring that the delivered material is in line with the agreed specifications. The purchaser is responsible for any extra costs incurred by Enervent Zehnder for the defectiveness, unsuitability or other flaws of the material.

## 6 QUALITY

Enervent Zehnder adheres to a quality system appropriate for the ventilation unit manufacturing sector with inclusive quality-assurance measures.

## 7 SAMPLE BATCHES

With regard to any special products, Enervent Zehnder can deliver the purchaser a sample product before initiating serial deliveries, if this and the price has been agreed upon in connection with the order or order confirmation. The purchaser is responsible for inspecting the sample without delay and for notifying Enervent Zehnder of its inspection findings.

## 8 DELIVERY TERMS AND LIABILITY FOR RISK

Unless otherwise agreed upon, Enervent Zehnder's deliveries will be implemented in accordance with EX WORKS terms (Incoterms 2010) from the production facility that has manufactured the product. Products will be delivered in suitable shipment packaging. Any special packaging will be charged separately. The liability for risk is transferred to the purchaser when the product is assigned to the purchaser or consigned for transported by an independent carrier, subject to the agreed delivery clause. If the goods cannot be assigned at the agreed time due to the purchaser or a circumstance relating to the purchaser, the liability for risk will be transferred to the purchaser when

Enervent Zehnder has completed all actions to facilitate the supply of the goods required in accordance with the agreement.

## 9 TERM OF DELIVERY AND DELAYS

If Enervent Zehnder is unable to deliver on the agreed time of delivery, Enervent Zehnder will inform the purchaser on this without any delay as soon as it has been notified of such a delay. Unless the reason for delay is a case of force majeure, and the breaching of the agreement carries an essential meaning to the purchaser, the purchaser can cancel the order completely or in part, if Enervent Zehnder's delay amounts to more than 15 weeks of the originally agreed date of delivery. Unless express agreement is made to the contrary, Enervent Zehnder is not liable to pay any contractual penalty or damages to the purchaser due to the delay, nor for any consequential damage, indirect damage or consequential loss suffered by the purchaser (please refer to section 17 of these terms below). If Enervent Zehnder's delay is caused by Enervent Zehnder's negligence, the purchaser is entitled to demand compensation for demonstrated direct damages. Unless otherwise agreed, the amount of damages, however, is at maximum 0.5% of the value of the delayed delivery for each full week of delay after the date of delivery, with a total amount of damages at maximum 7.5% of the value of the delayed delivery.

## 10 FORCE MAJEURE

Enervent Zehnder is not obliged to fulfil the contract, if a delivery of a product or its part is prevented due to a natural obstacle, fire, machinery breakdown or comparable damage, strike, lockout, war, military mobilization, export or import ban, lack of carrier vehicles, cease of manufacture, interruption of traffic, or another obstacle that Enervent Zehnder cannot overcome (force majeure).

If the purchaser terminates or cancels the agreement made between the parties due to a force majeure situation on Enervent Zehnder's side, Enervent Zehnder is not liable to pay damages to the purchaser for any losses caused by the termination or non-performance of the agreement.

## 11 PRICES

The offered prices do not include value added tax. Value added tax will be added to the total sum of the invoice in accordance with the tax rate valid at the time of delivery. Enervent Zehnder reserves the right to change its prices on the basis of grounds mentioned in section 2.

Enervent Zehnder will inform the purchaser of any general price changes at the latest 14 days before they enter into force. If the purchaser does not accept the price change, it has the right to cancel its order within seven (7) days of having received notification of the price change by notifying Enervent Zehnder in writing within the specified time, and in other cases, the new prices will be applied.

## 12 PAYMENT AND OWNERSHIP OF GOODS

Payment will be made in accordance with terms of payment provided in the offer. Unless otherwise agreed upon, the term of payment is 14 days net from the date of Enervent Zehnder's invoice. Ownership of the delivered products will transfer to the purchaser only after they have been paid to

Enervent Zehnder in full. This ownership retention provision does not affect the transfer of liability of risk as set forth in section 8.

Without consent from Enervent Zehnder, the purchaser does not have the right to resell, pledge, commission, install, convert or further refine products, before they are paid for in full. If the purchaser is in breach of this contract term, Enervent Zehnder has the right to interrupt agreed deliveries, until such a time when the products have been paid for in full or a security has been deposited for them. If the breach is essential, Enervent Zehnder shall have the right to cancel any undelivered orders of the purchaser and to terminate the business relationship with the purchaser with immediate effect.

### **13 ADVANCE PAYMENT OR DEPOSIT AS A PRECONDITION FOR DELIVERY**

Enervent Zehnder shall always be entitled to demand an advance payment as precondition for a delivery of goods. Enervent Zehnder also has the right to demand an advance payment or a deposit for the continuance of deliveries, if Enervent Zehnder has reason to suspect that the purchaser's financial standing has weakened or if the purchaser has failed to comply with a payment due date. For a delayed payment, a valid penalty interest for the time period between the due date and payment date will be charged on the invoice.

### **14 FAULTY DELIVERY AND WARRANTY**

Within eight (8) days of receiving a delivery, the purchaser must notify of any faults or deficiencies in the shipment or products, which the purchaser has observed or should have observed. Unless such a notification is made by the purchaser, the purchaser is deemed to have accepted the shipment or products and can after this no longer make an appeal on the basis of such a fault or deficiency in the goods. Enervent Zehnder has the right to primarily either repair the fault or deliver a new product.

The warranty provided by Enervent Zehnder for its products has been determined in accordance with separate general warranty clauses and agreements on the limitation of risk.

With regard to special products, or if a product is being manufactured in accordance with the purchaser's own specifications, Enervent Zehnder is responsible for ensuring that the structure of a delivered product is in line with agreed specifications. Enervent Zehnder is not responsible for any faults caused by specifications, materials or constructions determined by the purchaser, nor for the suitability of a specific product for the purchaser's purpose of use. Enervent Zehnder's liability for product faults is only limited to product faults which occur in conditions required by the agreement when using the product correctly, and provided that the product has been transported and installed in accordance with instructions. Enervent Zehnder is not liable for any faults or deficiencies caused by insufficient maintenance, neglect to service, incorrect installation, changes done without Enervent Zehnder's written consent, repairs not conducted by Enervent Zehnder, abnormal conditions of use or ordinary wear and tear and deterioration.

Products observed in the acceptance inspection to be faulty or products to be repaired or replaced on the basis of the warranty must be returned to Enervent Zehnder in accordance with the instructions and the original packaging provided by Enervent Zehnder, with Enervent Zehnder being responsible for any normal and reasonable transportation costs. Enervent Zehnder will deliver at its

own cost the repaired or replacement products to the original location or another location agreed upon with the purchaser.

## **15 PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

It is the purchaser's responsibility to determine any limitations resulting from patent rights, protection of designs or equivalent rights of third parties for the special product to be delivered to Enervent Zehnder. The purchaser is liable to compensate for any damages caused due to a violation of the intellectual property rights of third parties.

## **16 PRODUCT LIABILITY AND INSURANCE OBLIGATION**

In accordance with Finnish product liability legislation and these terms of sale, Enervent Zehnder is liable for any personal injury or material damage caused to third parties by the products it has manufactured. A purchaser who is a retailer must have sufficient insurance for product liability damages approved by Enervent Zehnder.

If Enervent Zehnder has reason to suspect that a product causes a hazard to the user or a third party, Enervent Zehnder has the right to cease the delivery and retract the product. Such a situation will be considered as a force majeure event.

## **17 LIMITATION OF LIABILITY**

Enervent Zehnder is not liable for any damage caused by incorrect installation or maintenance, unless the installation or incorrect maintenance was carried out by Enervent Zehnder. Enervent Zehnder is also not liable for any damage caused by neglect in implementing maintenance procedures or improper use of a device.

Enervent Zehnder is not liable for compensating any indirect or consequential damages, such as production losses, loss of profits or turnover or any other consequential losses (also refer to Enervent Zehnder's general warranty terms) caused to the purchaser by a delay or faulty delivery.

Enervent Zehnder's liability for direct damages shall be limited to the purchase price paid by the purchaser.

## **18 APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

Unless otherwise agreed between Enervent Zehnder and the buyer, this agreement is governed by the laws of Finland, except for the regulations pertaining to the selection of the applicable legislation and the UN Convention on Contracts for the International Sale of Goods (CISG).

The parties shall primarily endeavor to settle any disputes relating to this agreement between Enervent Zehnder and the purchaser through mutual negotiations. Unless otherwise agreed, any disputes that cannot be settled through negotiations between the parties, will be settled through binding arbitration proceedings in the Helsinki Chamber of Commerce in accordance with rules on arbitration proceedings.

However, Enervent Zehnder shall always have the right to collect any invoices due from the purchaser in the district court of the domicile of Enervent Zehnder as court of first instance.