

Movement by Perfection



**The Royal League** in ventilation, control and drive technology

# General Terms and Conditions of Business

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Please note that this is an English translation of the original Spanish version. Both language versions shall have the same legal effect. In case of any conflict, the original Spanish version shall prevail.



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## **General Terms and Conditions of Business of ZIEHL-ABEGG Ibérica S.L.**

### **I. Application of the General Terms and Conditions of Business**

1. All our deliveries, services and offers shall be governed by these General Terms and Conditions, which, in addition, shall govern any future commercial relationship, even if not explicitly agreed.
2. It will be considered that these General Terms and Conditions have been accepted by the customer upon receipt of goods and services at the latest. Therefore, any counter-confirmation made by the customer by invoking its own General Terms and Conditions or General Terms of Purchase shall be rejected. None of the customer's terms and conditions to the contrary are binding even if the order is based on them or if the customer refers to them in forms or other documents. Any of the customer's terms and conditions that conflict with those of this document are expressly excluded.
3. Any rights granted to us by current law in addition to those provided in these General Terms and Conditions remain unchanged.
4. These General Terms and Conditions shall apply exclusively in relation to commercial legal relationships between business owners.
4. Unless the information referred to by the customer when making a purchase order is in our catalogues, the customer is obliged to provide us with the necessary general information, such as final use, type of installation, operating conditions and any other information that is to be taken into account.
5. Our deliveries will include protection devices when expressly agreed.
6. In accordance with intellectual property and copyright laws, we reserve the exploitation rights over cost estimates, drawings and any other document. Such documents may not be transferred to third parties. The drawings and documents that form part of our offers must be returned without delay if the purchase is not made with us.
7. Subsidiary agreements shall be confirmed by the party relying on them.

### **II. Offers, Scope of Services**

1. In order to determine the scope of our deliveries and services, our written confirmation of the purchase order will be decisive or, in the event that we make an offer with a time limit and that offer is accepted on time, the offer will be decisive if the order has not been confirmed in due time.
2. Any illustrations, drawings, information such as weights, measurements, performance and consumption, and any other description of the goods in the documentation annexed to our offer are only approximate whenever not expressly specified as binding. They do not in themselves constitute any agreement, guarantee of quality or specification of the goods.
3. For technical reasons, we reserve the right to make excess or short deliveries of up to 5% of the agreed quantity for consumables or small items. In the case of short deliveries, there will be no refund.

### **III. Specific terms for correspondence exchanged by electronic communication and fax**

1. If a message (statement of intent) is sent electronically (electronic communication), it will be considered that the message has been received by the recipient when the message has been delivered to the recipient's communication device.
2. A message shall be deemed to have been received by the recipient through retrieval of the message when it is available for retrieval at the corresponding location of the sender's communication device and when the recipient has retrieved it from that place.
3. The contracting parties acknowledge the legal validity of transmitted messages under points 1 and 2 above.
4. If the contracting parties exchange correspondence by fax, the transmission report shall be deemed sufficient proof of receipt of our communications.

### **IV. Price**

1. Unless otherwise agreed, our prices are ex-works and include loading at our facilities but do not include packaging. The VAT rate applicable at the time will be added to such prices.

2. In the event that the delivery or service is to be made or rendered more than four months after the signing of the contract, we reserve the right to increase our prices in order to allow for any significant increases in the costs prevailing at the time of the conclusion of the contract whenever they are decisive for the determination of our prices, particularly, the cost of materials, wages and public charges.

## V. Reservation of Ownership

1. We reserve the right to demand a guarantee until the customer has settled all outstanding debts (including those on current accounts and credit) both at the time of sale and in subsequent transactions, for the relevant legal reasons. Said guarantee shall be returned at the request of the customer as long as its value permanently exceeds 20% of the debts it bears. In order to determine the guarantee, any credit shall always be valued at its nominal value, any goods whose ownership is retained will be valued at the net purchase price (VAT not included) stated in the invoice and, in the case of co-ownership, the corresponding part of the actual value of the main item will be the determining factor. Thus, from the value determined, the highest third-party interest will be deducted until the credit is guaranteed with said interest at the time the customer requests the return.
2. All goods supplied will remain our property until all debts arising from the business relationship, including those that are not yet due, have been fully settled. This also applies if the customer accepts the outstanding balance. In such an event, reservation of ownership shall serve as guarantee for the debt resulting from said balance. The customer has the obligation to keep the goods in good condition for the duration of the reservation of ownership right. In particular, the customer is obliged to insure the goods for their acquisition value, at its expense, against any damages caused by fire, water and theft. The customer shall immediately assign to us any compensation received following a claim on such insurance. Such assignment is accepted in these general terms and conditions. Should such assignment not be possible, the customer shall irrevocably instruct its insurer to make payment, if any, exclusively to us, without prejudice to any other claim of greater scope made by us. At our request, the customer shall provide us proof of the insurance policy.
3. The customer has the right to resell or process the goods supplied within the framework of its professional activity. In the case of a resale, the credit right arising from the resale of goods, which will be transferred to us by the customer with all secondary rights, will replace the goods supplied. We accept such transfer. Should such transfer not be possible, the customer shall irrevocably instruct its buyer to make payment, if any, exclusively to us. The customer has the right to receive credit until its revocation. All amounts received must be deposited collectively and must be remitted to us by the customer until all debts have been paid in full. If the customer's buyer makes payment by bank transfer, the customer shall transfer to us, from that time, the payment made, through the relevant financial institution by which the bank transfer was made. We accept such transfer. At our request, the customer shall provide us with all the required information and allow us to review the records.
4. In the event that the customer processes the goods whose ownership is retained, the contracting parties agree that such processing shall be carried out on our behalf, so that the new goods will become our property. The customer's expectant rights on the goods whose ownership is retained will continue until the relevant time on the processed goods. If the processing costs substantially exceed the value of our goods, the contracting parties agree that the goods shall also be processed on our behalf and that we shall acquire, in co-ownership, a share of the new goods which is proportionate to the invoice value of our goods. If the customer incorporates goods whose ownership is retained into other goods in such a way that our goods become an essential part of those other goods, which become considered as the main goods, the customer transfers to us from this time proportional co-ownership in the new goods. The customer shall keep such goods in storage without any charge to us. In the event of resale, the foregoing provisions shall apply.
5. If, at the time of signing the contract, we have reasonable doubts as to the customer's creditworthiness, or if the customer fails to settle a debt incurred with us, we have the right to terminate the contract without providing an additional performance period and to require, by means of a guarantee, that the goods of which we are owners or co-owners will be transferred to us until any debts contracted have been fully settled.
6. In the event of any receivables or goods of which we are owners or co-owners being seized or confiscated by third parties, the customer shall provide without delay proof of our ownership of the goods to such third parties or to the enforcement official. In addition, the customer shall notify us of the measures taken without delay and provide us with support in the manner necessary to ensure the protection of our rights. If we confiscate the goods, such confiscation may not be considered a waiver of our reservation of ownership or a termination of the contract.
7. The goods of which we are owners or co-owners may not be assigned to third parties as a guarantee, or be provided as collateral or otherwise encumbered.



8. If the goods are delivered in a country with a different legal system, where the provisions relating to the reservation of ownership under paragraphs 1 to 6 above provide less protection than in the country where our company has its registered office, the customer shall provide us with a guarantee that is customary in such country and which is equivalent, in economic terms, to the reservation of ownership in the country where our company has its registered office. If further statements or actions are necessary for that purpose, the customer must do everything necessary to provide such guarantee immediately. The customer shall take all appropriate measures to ensure the validity and enforceability of such guarantee.

## VI. Terms of Payment

1. Unless otherwise agreed, payment of our invoices shall be made, without the possibility of any discount, within ten days of the invoice date. Payment in cash or by bill of exchange will be accepted only after agreement between the parties. Even when the provisions of the customer stipulate otherwise, we reserve the right to apply payments first against the customer's oldest debts, in which case we will inform the customer of the type of adjustment made. If any cost or interest has already been incurred, we reserve the right to apply the payment first against costs, then against interest and finally against principal debt.
2. Payments shall be deemed to have been made only when such amount is available. In the case of payment by cheque, payment shall be considered made only when the cheque has been cashed.
3. In the event of the customer delaying payment, we reserve the right to charge the customer the corresponding interest for delay at a rate of 8% above the applicable legal interest rate at the time, starting from the relevant date. In addition, we reserve the right to demand compensation for damages.
4. If there are reasonable doubts as to the customer's creditworthiness, particularly, if a cheque cannot be cashed or if payments are suspended or if any other circumstance raises reasonable doubts about the customer's creditworthiness, we reserve the right to demand payment of the remaining debt even if we had accepted payment by check. In such an event, we also reserve the right to demand payment in advance or the provision of a guarantee.
5. The customer can file a counterclaim, which will give it the right to set-off against the claim for payment only if the claim was established by a final declaratory judgement or if it was incontestable. The customer can claim its right to

retention only if the customer's counterclaim derives from the same contractual relationship.

## VII. Delivery and Service Deadlines

1. Any delivery dates or deadlines, which may be defined as binding or non-binding, shall be agreed in writing.
2. We shall not be held liable in the event of any delays in delivery or provision of service caused by force majeure or by events that may hinder or prevent delivery. Such events particularly include strikes, lockouts, official orders, etc., even if those events also affect our suppliers or their sub-suppliers and even though the periods and deadlines have been bindingly agreed. As a result of such events, we reserve the right to delay delivery or provision of service for a time equal to the duration of the hindrance plus a reasonable start-up period. If such events significantly alter the financial value or content of the delivery or service, or if they have a significant impact on our business operations, we may additionally request a reasonable adjustment to the contract. If the hindrance lasts for more than one month, we reserve the right to terminate the contract in whole or in part due to failure to fulfil part of the contract. If we intend to use such right of termination, we shall notify the customer of such intention once the relevance of the impediment has been confirmed by us. If, as a result of such events, the delivery time is extended or if we are released from the obligation to provide our service, the customer shall not be entitled to any claim for damages. However, the foregoing circumstances can only be invoked if the customer has been appropriately notified.
3. If, for reasons attributable to us, there is a breach of the bindingly agreed periods and dates for delivery and provision of services, the compensation claimed by the customer shall be limited to an amount equal to 0.5% for each full week of delay and, in total, up to a maximum of 5% of the value of the invoice for the deliveries and services affected by the delay. Any additional claim shall be excluded unless the delay was caused by at least gross negligence.
4. We reserve the right to make partial deliveries at all times and to provide partial services, unless this constitutes an unacceptable burden for the customer.
5. Fulfilment of our obligations of delivery and provision of services is dependent upon fulfilment by the customer of its obligations in a timely and appropriate manner.
6. The delivery deadline will be considered met if the goods have left the premises or if we have notified the customer that the goods are ready for delivery at the time the deadline expires. Delivery within the set deadline shall be subject to the proper and timely supply of the necessary materials to our facilities.



7. Any delay in delivery entitles the customer to terminate the contract if, at the time of the delay, the customer gives a final additional period for the provision of the service and a warning that such service will not be accepted if that additional period has expired, and if such period finally expires without the delivery being made.
8. If there is a delay in acceptance by the customer, we reserve the right to demand compensation for damages. In such an event, the risks of accidental impairment, loss and destruction shall pass to the customer.

### VIII. Supply of Software

1. If software is supplied, the customer is granted a non-exclusive and non-transferable right to use the software and related documentation in order to operate the goods for which the software is supplied. The customer may not make any copies of it other than a backup copy. Any references to the authors, serial numbers and any other items used to identify such software may not be removed or altered.
2. The client is obliged to prevent any unauthorized access of third parties to the software and documentation by taking the appropriate measures. The customer must keep the original data storage device supplied and the backup copy in a place protected against unauthorized access by third parties. The customer must continually remind its staff of the duty to comply with these terms and conditions and any copyright laws.
3. Our liability for the loss or alteration of data is limited to the cost of recovery that would be incurred if backups were made at regular intervals and according to the risk.

### IX. Transfer of Risk and Acceptance

1. The risk is transferred to the customer at the time of delivery of the parts to be supplied, even if partial deliveries are made or even if other obligations have been assumed, such as shipping costs or delivery and installation. If shipment is not possible due to causes beyond our control, the risk is transferred to the customer at the time of notice that the goods are ready for delivery.
2. If there is a delay in delivery due to circumstances attributable to the customer, the risk is transferred to the customer from the time the goods are ready for delivery.
3. The customer must accept the goods supplied even if they contain minor defects.

### X. Claims for Defects

1. The customer may not refuse deliveries on the basis of insignificant defects. It is the customer's obligation to inspect deliveries and report any defects, as well as their consequences. Any obvious defects and those identifiable upon due inspection must be reported in writing no later than eight days after delivery of the goods to the customer. Other (hidden) defects must be reported to us in writing no later than eight days after being discovered. Notice of defects must be sent in writing to our head offices. Any notice of defects conveyed to site personnel, carriers or third parties shall not be considered notice of defects in due time and form.
2. We assume responsibility for a specific application or suitability only upon explicit written agreement. Otherwise, the customer assumes the risk of suitability and use. If we have informed the customer of any technical conditions or other specifications regarding use, the customer will be responsible for meeting them and must, in turn, inform its buyers of such specifications and oblige its buyers to meet them. We will not assume any responsibility for defects arising as a result of the use of the goods in any way that fails to meet the specifications. Specifically, claims for defects will not be accepted when damages to the item supplied or to any of the customer's other goods are caused by any of the following reasons:
  - a. Improper processing, assembly or treatment.
  - b. Improper installation of the delivered item, by the customer or a third party, unless such improper installation was carried out according to our instructions; for which reason, our installation staff are not authorized to give instructions.
  - c. Failure to comply with the commissioning instructions, application and operation of the delivered item contained in the product documentation, operating instructions or instructions given by us for that item.
  - d. Normal wear and tear not due to manufacturing or material defects.
  - e. Improper handling or improper repair of the goods performed by the customer or by third parties, or carried out inadequately, specifically, by unqualified people or due to the use of non-original parts or equipment.

We will not assume responsibility for defects that are the responsibility of the customer or which have occurred for technical reasons other than the original defect.

3. If a defect is identified and the goods need to be returned, the return shall be made only with our prior consent. The return of goods carried out without our consent will not be accepted. In any such case, the customer shall assume the shipping costs.



4. If the goods, after the appropriate notice of defects, are repaired or replaced by others, the provisions of Section VII regarding delivery times will apply.
5. The existence of a defect that has been identified as such and has been reported to us in due time and form will grant the customer the following rights:
  - a. If a defect exists, the customer can first request that the item be repaired or replaced („subsequent performance“). Unless clause X. 5 c) is applicable, the decision of whether to supply a new item or repair the defective item shall remain at our discretion. If the item is repaired, to the extent that the notice of defects is justified, we will be obliged to assume any direct expenses arising that are necessary to repair such item, particularly any transport costs, travel expenses and the costs of our own labour and materials, provided that such costs and expenses do not increase as a result of transporting the materials to a site other than the agreed delivery address. This obligation shall be limited to any costs arising or which could arise in relation to the delivery address for the goods. If the goods are sent to an address other than the delivery address, and if the different address was not included in the supply contract by and between us and the customer, the customer shall bear the extra costs caused by such alteration.
  - b. Should we choose to do so, we may use third parties to repair the goods or replace them with others, without establishing a contractual relationship between the customer and such third parties. In that event, we will assume the same responsibility as if the repair or replacement was performed by us. In addition, if the attempt at subsequent performance fails, subject to clause X. 5 c), we may make a new attempt, once again reserving the right to choose between repairing or delivering a new item. In the event that such attempt fails once again, the customer shall have the right to terminate the contract or reduce the purchase price.
  - c. The provisions concerning subsequent performance, such as under clause X. 5 a) or X. 5 b), shall not apply if they would cause an unacceptable burden to the customer, as in the case of unjustified refusal or unacceptable delay in subsequent performance.
6. The time limit for the customer's defect claims is one year, unless the defective item has been used in a building under normal use and has caused problems in that building. The one-year limit period also applies to tort claims arising from a defect in the goods. The limit begins upon delivery of the goods. This provision shall apply without prejudice to our unlimited liability for losses incurred as a result of breach of warranty or death, injury, health problems, misconduct

and gross negligence, as well as for defects in the item. If we make a statement in relation to a defect claim made by the customer, such a statement shall not be considered as the commencement of negotiations on the claim or the circumstances that led to that claim if we categorically reject the relevant claim. In any event, the customer must prove that the defect already existed at the time of delivery.

## **XI. Liability**

1. We assume unlimited liability for losses incurred as a result of breach of warranty or death, injury or health problems. The same applies with respect to our liability for misconduct and gross negligence.
2. In cases of slight negligence, we only assume liability for breach of material obligations arising from the nature of the contract and that are especially relevant to the purpose of the contract. In the event of breach of such obligations, or if there is a delay or the rendering of the service is or becomes impossible, our liability shall be limited to those losses that may be foreseeable under the contract.
3. The foregoing provisions shall apply without prejudice to mandatory product liability.
4. Any claim by the customer for reimbursement of expenses is excluded, unless a relevant third party has generated such expenses. In addition, any claim for damages or for the reimbursement of expenses - for any legal reason - that exceeds the provisions of clause XI (1) to (3) is excluded.
5. Our liability for essential third-party products is limited to claims for defects against the third-party product supplier. This provision shall not apply if such claims against the supplier are not legally applicable or if they are unacceptable to the customer.
6. In the event that the customer or one of its customers resells the goods delivered by us to an end customer (natural person), the legal provisions in the Spanish Civil Code shall apply to defect claims. In that event, we shall be liable only if the customer has not agreed with its customer to terms and conditions that exceed the mandatory legal provisions for defects of the product and provided that the customer had fulfilled its obligation to inspect the product and report the possible defect.
7. Repair due to defects, replacement of products or payment of damages shall not be regarded as recognition of a legal obligation, unless we agree otherwise in each specific case and in writing.

## **XII. Other Customer Obligations, Export Control**

1. The customer must not alter the goods in any way that may affect their safety. In particular, the customer must not change or remove the hazard warnings against misuse of the goods under contract.  
If this duty is not fulfilled, the customer shall indemnify the person concerned internally and hold us harmless against any product liability claim made by third parties whenever the customer is responsible for such misuse.
2. If any product needs to be withdrawn or a warning issued for defects on any goods, the customer must assist us in taking any appropriate measures we require of it. The customer is obliged to bear the costs of product withdrawal or warnings, whenever, in accordance with the principles of product liability law, the customer is responsible for the defects in the product and any damage caused. This provision shall apply without prejudice to other claims submitted by us.
3. The customer shall notify us, without delay, of any risk in the use of the goods under contract and any product defects that may have been found.
4. The supply of goods (products, software, technology) in the performance of this contract may be subject to export restrictions or prohibitions. The customer must comply with all applicable control regulations and relevant restrictions. This provision applies in particular to European, Spanish and, where appropriate, United States laws concerning (re-)exports. In the event of resale/reshipment of the supplied goods, the customer shall inform the recipient of the export control laws.
5. In particular, the customer must ensure that the goods are not directly or indirectly used for purposes related in any way to chemical, biological or nuclear weapons or their transportation systems. In addition, the customer must ensure that the items are not used directly or indirectly for military purposes in countries subject to an arms embargo. The customer shall not sell, export, re-export, supply or transfer the goods or otherwise directly or indirectly make them available to persons, companies, facilities, organizations or countries if, in doing so, any applicable European or Spanish export control law or regulation, as well as any US provisions on (re-)exports, would be violated.
6. The customer, if requested, shall provide any certificates required to prove the destination and end-use of the goods in order to obtain export licences or authorizations.
7. The customer shall be fully responsible for any loss incurred by us that is caused by its failure to comply with applicable export control laws, including US (re-)export regulations.
8. The performance of the contract and fulfilment of its obligations is subject to obtaining the required export or

transfer permits and approvals, or any other authorization stipulated by foreign trade laws, or any other approval of competent authorities, and fully complying with all legal restrictions relating to export control laws.

9. The customer will be responsible for all taxes, charges and duties related to the service outside the Kingdom of Spain and must compensate us where applicable.

## **XIII Confidentiality**

The contracting parties are under obligation to maintain, for an unlimited period of time, the confidentiality of any information to which they have access and which is classified as confidential or which may be identified as a trade or business secret according to other circumstances, and they may neither convey nor exploit such information. The contracting parties shall ensure, by means of appropriate contractual agreements, that their employees and agents also refrain, for an unlimited period of time, from exploiting, conveying or recording any secret trade or business information on their own behalf without authorization.

## **XIV. Miscellaneous**

1. The transfer of the customer's rights and obligations to third parties is subject to our written consent.
2. Any legal relationships between the contracting parties shall be governed by the laws of the country in which our company has its registered office, excluding any effect of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. With respect to legal relationships between traders, the sole place of jurisdiction for any dispute resulting from the business relationship between the contracting parties shall be the place where our company has its registered office. We reserve the right to submit such dispute to the jurisdiction of the place where the customer has its main business unit, as well as to the jurisdiction of any other permitted place.
4. The place of provision of all the services of the contracting parties shall be the place where our company has its registered office.
5. In the event of any clause of this agreement being or becoming void or unenforceable in whole or in part or if there is a gap in this agreement, the validity of the remaining provisions of the agreement shall not be affected. In place of the void clause, current legal provisions shall apply. If any clause of this agreement is or becomes unen-





forceable and if, by the application of the legal provisions in force, a reasonable solution is not reached for either Party, a clause corresponding to what would have been agreed according to the purpose of this agreement if the contracting parties had considered the relevant issue from the outset shall be deemed to be approved. The foregoing shall also apply, where necessary, in the case of a gap in the agreement.

# The Royal League

