

Movement by Perfection



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

# General Terms and Conditions of Purchase

September 2017

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



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## **General Terms And Conditions of Ziehl-Abegg Vantilatör Ve Motor San. Ve Tic. Ltd. Şti.**

ZIEHL-ABEGG Turkey ("ZA TR" or "Client") hereby expressly rejects the applicability of any terms and conditions (of supply) used by the party providing Goods and/or Services (both as defined below) to the Client under the Contract (as defined below) ("Seller") (jointly "Parties").

### **1. Application**

- 1.1. These General Terms and Conditions of Purchase ("General Terms and Conditions") govern all requests, offers, orders and contracts for the supply of items to be delivered by Seller in accordance with the Contract (as defined below) including all materials, documents or deliverables which are the result of Services provided by Seller in accordance with the Contract (as defined below) ("Services") in any form or media, including but without limitation to data, diagrams, drawings, reports and specifications ("Goods").
- 1.2. Any alternative terms or any conditions required by Seller shall only be binding if they have been expressly accepted by Client in writing. Seller shall derive no future rights from any such agreed alternative terms.
- 1.3. If Client has already provided Seller with a copy of these General Terms and Conditions on respect of an earlier Contract (as defined below), or if Client has notified Seller as to where it may have access to these General Terms and Conditions, Seller is then deemed to have knowledge of this document. Once a Contract (as defined below) has been entered into with Seller on the basis of these General Terms and Conditions, then Seller is deemed to agree to any future contracts between itself and Client being governed by these General Terms and Conditions.
- 1.4. If any term of these General terms and Conditions is void or voidable, the other terms shall remain fully enforceable.

### **2. Orders and Confirmation**

- 2.1. If Client makes an offer to Seller for the purchase of Goods and/or Services ("Order"), the Order shall be valid only if placed in writing, by telefax or by email. Signing on the part of Client shall not be required. An Order placed shall be confirmed by means of an Order confirmation issued by Seller to Client, except where there is an explicit written agreement regarding waiver of the requirement for the confirmation of orders between Client and Seller. Where Client does not receive the Order confirmation within 14 (fourteen) calendar days commencing from the date of the Order, Client shall reserve the right to cancel the Order without any obligation. Upon Seller's acceptance of the Order and subject to Article 3.1, each Order

shall constitute the contract between Client and Purchaser for the purchase of Goods and/or Services, and replaces all earlier written and oral proposals, communications and agreements, subject to these General Terms and Conditions forming an integral part of the Contract ("Contract").

- 2.2. Unless otherwise agreed between Parties, all quotations submitted by Seller as well as all associated activities shall be binding and free of charge for Client.
- 2.3. Client shall also be at liberty to request changes to the subject of delivery following conclusion of the Contract where this can be reasonably expected of Seller. In the event of such amendment to the Contract, due consideration shall be given to the consequences for both Seller and Client, in particular as regards additional or reduced costs as well as the delivery dates.

### **3. Prices, Shipment, Packaging, International Transport, International Trade Control**

- 3.1. The agreed prices are fixed prices and shall exclude additional claims of whatever nature. Where prices are not specified in the Order, they shall be stated in the Order confirmation with binding effect. In such event, the Contract shall not come into being until Client has given its written consent to the stated prices.
- 3.2. The agreed prices are inclusive of all costs and supplements, including but not limited to, the costs of packaging and transport to the forwarding address specified by Client or the place of use as well as costs incurred for customs and clearing formalities. The prices of Goods shall be effected Delivered Duty Paid (DDP – according to Incoterms@2010).
- 3.3. The Order number of Client shall be stated on advices of shipment, bills of lading, invoices and all correspondence with Client. Client shall only be able to process invoices where – as specified in the Order – the Order number shown therein is indicated in addition to any other information explicitly mentioned. Seller shall be accountable for all consequences ensuing from failure to comply with the afore-mentioned obligation, unless Seller is able to prove that it was not responsible in this regard.

- 3.4. Client shall only be obliged to take delivery of the quantities or piece numbers if ordered by Client for a specific time of delivery. Deliveries which exceed or fall short of the specified quantity shall only be permitted if previously agreed with Client (normally in writing).
- 3.5. Unless otherwise specified in the Order, title of ownership and risk of the Goods and Services shall pass from the Seller to the Client upon delivery in accordance with the delivery term specified in the Order.
- 3.6. Unless otherwise specified in the Order, packing/packaging, insurance, loading, shipment, unloading shall be made under the responsibility and at the risk and expense of the Seller. Seller shall be responsible for accomplishing required preservation, packaging, packing of all items to prevent deterioration or damage during the shipment (also including but not limited to loading and unloading) and storage, arising from weather conditions, carriage or storage conditions etc. Seller shall be responsible for the damage or loss resulting from insufficient packing and/or packaging of shipped Goods.
- 3.7. A delivery note shall be included with every shipment. The delivery note shall at least contain the following data: the total of the delivery quantity and all data indicated in the Order, especially the Order number, item and the correct unloading point. The Goods delivery shall be labelled as follows: Total shipment of all packing units per delivery note; The individual packing unit (e.g. pallet, skeleton box, container, large box, etc.); The part/partial quantity therein (bag, roll, packet, etc.) labelled with quantity and drawing number according to the technical specification.
- 3.8. Where Goods are transported beyond international borders, Seller shall be obliged to provide the customs invoice necessary for custom clearance already at delivery. The invoice shall be issued in English or the language of the destination country and shall include the following data: name and telephone numbers of Client and Seller contact persons who are familiar with the transaction; Order/Order number, Client's invoice items of the Order, release code number (with skeleton agreements), individual component numbers and detailed description of Goods; purchase price per item stated in the currency applicable to the transaction; quantity; INCOTERM or Incoterms®2010 and designated location, in addition to the country of origin and customs tariff number of the Goods. Moreover, all Goods and/or Services provided by Client to Seller for production of Goods which are not included in the purchase price shall be identified separately on the invoice (e.g. consigned materials, tools, etc.). Every invoice shall also include the relevant Order number or other references to consigned Goods and list all discounts or reductions offered on the basic price which were taken into consideration when determining the invoice value.
- 3.9. Where agreements exist between the destination country to which Goods are to be delivered and the country in which Seller is based in respect of preferential treatment in terms of commerce or customs duties („Trade Agreement“), Seller shall be obliged to co-operate with Client in examining the eligibility of Goods for special programmes of benefit to Client and to supply Client with the necessary documentation (including but not limited to, the EUR1 Certificate, preferential certificate of origin, FAD, NAFTA Certificate of Origin or other certificates of origin) in accordance with the relevant preferential customs treatment programme (e.g. EEA, Lomé Convention, EU / Mediterranean Partnerships, GSP, EU-Mexico Free Trade Agreement, NAFTA, etc.) to allow Goods to enter the destination country duty-free or subject to preferential treatment. Likewise, where there exists a Trade Agreement or preferential customs treatment programme which is applicable to the scope of the Order and this is deemed by Client to be of benefit to Client at any time during its execution, Seller shall be obliged to support Client in its efforts to realise such benefits, including the value of any countertrades ensuing from the Order or set-off, and Seller shall acknowledge that such benefits and preferential treatment shall solely accrue to Client. Seller shall be obliged to indemnify Client for any costs, fines, contractual penalties or charges resulting from Seller's inaccurate documentation or failure on the part of Seller to co-operate in a timely manner. Seller shall be obliged to immediately notify Client of any errors known to exist in the documentation.
- 3.10. Where the ICS (Import Control System) customs procedure is of relevance, this shall be observed by Seller, who shall thus in particular make available to the custom authorities the data pertinent to customs clearance in a timely manner in the form of the stipulated entry summary declaration (ENS).
- 3.11. All transactions within the scope of the delivery relations must always meet the requirements of the respectively valid export control laws and directives. Seller is obliged to meet the requirements of the respective valid export control laws and directives even after cancellation and beyond if the obligations within the scope of the business relations are fulfilled or cancelled in another way.

#### **4. Export Control and Customs, Seller Declarations, Certificates of Origin**

- 4.1. Seller is obliged to inform Client of any approval obligations for (re-)exports of its Goods in accordance with Turkish; European, US export and customs regulations as



well as the export and customs regulations of the country of origin of its goods in its business documents. Upon demand of Client, Seller shall be obliged to notify Client in writing of all other foreign trade data of its Goods and their components and to inform Client immediately in writing (before delivery of Goods affected accordingly by this) regarding all changes.

Further, in case of the existence of any export license, Seller shall provide a copy of that document to Client, showing all relevant information relating to the delivery, including any provisions Client has to comply with, e.g., but not limited to, cases of re-exports. Any information or provisions constituting compliance obligations of Client, may be blackened in that copy.

4.2. An essential part of the contracts ensuing from these General Terms and Conditions is the obligation to submit long-term delivery declarations for Goods with a preferential origin property in accordance with the EC version valid at the time of delivery. Seller shall also provide certificates or origin as well as any further documents/data according to foreign trade specifications upon demand. If the long-term delivery declarations turn out to be insufficiently informative or incorrect, Seller shall be obliged to provide Client with error-free, complete and customer-confirmed information sheets about the origin of Goods upon demand.

4.3. If Client or Client its customers are charged by a customs authority due to own faulty declarations of origin or if Client or Client its customers suffer any other financial disadvantages as a result and the error is due to an incorrect specification of origin of Seller, the Seller shall be fully liable.

4.4. Seller shall be responsible for obtaining in time, at its own cost, all necessary governmental export licenses, authorizations, approvals and clearances, required for the delivery to make sure that all Goods to be delivered can be used by Client in accordance with the Order and that all deliverables can be made in due time.

## 5. Reporting Obligations Conflict Minerals

5.1. Seller undertakes to comply with the respective regulations passed by the Securities and Exchange Commission (SEC) regarding conflict minerals. Seller shall find out about the conformity regulations that are defined in the Conflict Minerals Final Rule on the SEC Website. Seller shall implement resulting reporting obligations and measures vis-à-vis Client in a timely manner.

5.2. In case of failure to do so or in case of incorrect information following Article 5.1, Seller shall indemnify Client from claims by third parties.

## 6. Invoicing and Payment

6.1. Seller shall submit invoices in paperless form with the appropriate documents in pdf format after delivery to the following email address: [invoice@ziehl-abegg.tr]. Alternatively, the invoices should be sent to Client in single copy on white paper in DIN A4 format. All invoices shall be submitted without exception to the invoice address of the Client. Invoices submitted by fax shall not be processed.

6.2. Seller shall ensure that the invoices contain all the information required by Value Added Tax Law numbered 3065 and other relevant regulations. Invoices not submitted in due form shall not establish a due date for payment and shall only be deemed to have been received by Client once submitted in the proper form. Client reserves the right in the event of premature delivery to effect payment not until the due date agreed for settlement.

6.3. Payment shall be made by the normal commercial route, either within 14 (fourteen) calendar days with 3% (three percent) discount or up to 60 (sixty) days net, calculated according to delivery/service and receipt of invoice. Payment by Client is not deemed to waive any right of Client and constitutes no acceptance of Goods or Services.

6.4. Insofar as certificates of material tests or other documents are agreed for the scope of supply, these are an essential part of the delivery and must be submitted to Client together with the invoice at the latest.

6.5. Client shall hold a right of set-off and retention to the extent as provided by the statutory provisions.

## 7. Delivery Dates, Delay in Delivery, Force Majeure

7.1. The delivery date specified in the Order shall be binding.

7.2. Seller is obliged to inform Client immediately in writing, should circumstances arise or become known to Seller which results in not being able to comply with the agreed delivery date. Seller is at the same time obliged to provide Client with the probable duration of the delay.

7.3. In the event of any delay in delivery Client shall hold the statutory claims in this regard. In particular Client shall be entitled to demand compensation instead of performance following fruitless expiry of a period of time of reasonable length. Client shall additionally be entitled in the case of default to withdraw from the Contract at its discretion, whereby the risk of default on the part of Seller's sub Sellers shall be borne by Seller. Any additional costs incurred for express shipment required to comply with delivery dates shall be for Seller's account.





7.4. In the event of delayed delivery, Client shall be entitled to apply a contractual penalty amounting to 0.2% (zero point two percent) of the net total value of the Order per working day of delay up to a maximum of 8% (eight percent) of the net total value of the Order. Client may also apply the contractual penalty without making reservation until issue of the final invoice. Any claim to compensation due to non-performance shall be offset against the contractual penalty.

7.5. Seller shall only be entitled to claim against absence of provisions to be made by Client or other co-operation obligations if Seller has reminded Client in writing and Client has failed to meet these obligations within a reasonable period of grace.

7.6. If a delivery of Goods or performance of Services by Seller, or the acceptance thereof by Client, is delayed or prevented by an unforeseen and unavoidable event, including without limitation strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction etc. each and all of the foregoing being hereinafter referred to as "Force Majeure", such delivery or performance shall be suspended and Seller shall give written notice to Client specifying the nature and extent of the Force Majeure.

7.7. In the event of Force Majeure, either Party has the right to suspend all or part of the performance of the Contract for as long as the Force Majeure continues, without either being liable to the other for compensation as a result. The Party suspending performance must notify the other Party in writing of the facts giving rise to the Force Majeure, and must supply proof thereof. If the situation of Force Majeure lasts longer than 60 (sixty) days, then either Party has the right to terminate the Contract without thereby incurring any liability to pay compensation to the other Party.

7.8. In the event of Force Majeure, Client may only accept partial delivery following explicit written agreement to this effect. In case of agreed partial shipments, the remaining quantity shall be listed and the delivery date for the remaining delivery specified.

## **8. Liability for Defects and Guarantee/Warranty, Dealer Issues**

8.1. Seller guarantees that all Goods and/or Services conform with the state-of-the-art, the pertinent statutory provisions and rules and regulations of authorities, liability insurance associations and trade associations. If deviations from these regulations are necessary in individual cases, Seller must obtain written consent from Client. The responsibility

of Seller for these Goods and/or Services shall neither be excluded nor limited by this consent nor by any other approvals or other declarations on Client's part. Where Seller has reservations about the type of execution required by Client, Seller shall immediately notify Client in writing.

8.2. Seller undertakes to make use within its financial and technical means of environmentally friendly products and procedures for its deliveries/performances as well as for supplies or additional services rendered by third parties. Seller shall be liable for the environmental compatibility of the delivered Goods and packaging materials and for all consequential damage resulting from culpable failure to comply with its statutory obligations of disposal. Seller shall issue a certificate of inspection for the delivered Goods at Client's request.

8.3. Before dispatching Goods, Seller shall inspect and test the Goods to ensure that they comply with the requirements of the Client and in particular with the technical description (if any) of the Goods contained in the Order.

8.4. The statutory defect claims shall accrue to Client to their full extent (including consequential damage from defect). At all events Client shall be entitled at its discretion to request the elimination of defects by Seller or the delivery of a new item including to or at the place at which the product is used; this shall also apply in the case of contract work. It shall explicitly reserve the right to claim compensation, in particular to compensation in lieu of performance.

8.5. Where Seller fails to satisfy its obligation of subsequent fulfillment within a reasonable period of time set by Client, Client shall be entitled to itself perform the necessary measures at the expense and risk of Seller – without prejudice to further liability for defects in existence – or arrange for their performance by third parties. Client shall additionally be entitled to itself eliminate defects at Seller's expense in case of imminent danger or special urgency. The limitation period for claims in respect of material defects shall be 36 (thirty-six) months, calculated from the transfer of risk. In the case of spare parts the limitation period for claims in respect of material defects shall be 36 (thirty-six) months from installation or commissioning, but shall come to an end at the latest 4 (four) years from the transfer of risk. Claims due to defects on a building or items which were or are usually used for a building and have caused its defectiveness, have a limitation period of 5 (five) years after delivery.

8.6. For improved parts or for replacement delivery the limitation period for claims in respect of material defects shall begin after subsequent fulfillment. If acceptance has been agreed, the limitation period shall commence again from successful acceptance.



8.7. Seller shall bear the costs and risk involved in the return of defective items, as well as those costs incurred by Client due to their defectiveness (in particular costs of processing, transport, infrastructure, labour, staffing and materials).

8.8. If Seller is to be qualified as a dealer and not as a manufacturer, Seller shall inform Client of this immediately. The following shall also apply:

a. Seller guarantees that Client shall be put in a position with respect to the warranty and other rights based on defectiveness (material and legal defects) of the object of Contract as if Client had ordered directly from the manufacturer and the legal rights at least are pertinent.

b. Seller shall surrender its claims against the manufacturer(s) based on defectiveness (material and legal defects) of the object of contract to Client to help. Seller assures that these claims are not fulfilled or excluded.

## 9. Termination

9.1. Client is entitled to choose, without proof of default and by notice in writing to Seller, either to suspend all or part of the performance of work under an Order, or to terminate in writing all or any part of the performance of work under an Order, in either case with immediate effect, in which event Seller shall be entitled to be paid such amount as Parties may agree for the performance of work carried out under the Order up to the time of such termination.

9.2. If:

a. Seller commits a breach of the Contract; or

b. Seller is adjudged bankrupt or has a receiving order or administration order made against Seller or makes any composition or arrangement with or for the benefit of its creditors; or

c. being a company, Seller passes a resolution (or the court makes an order) for it to be wound up (not being a voluntary liquidation for the purpose of a solvent amalgamation or re-construction); or

d. a receiver or manager on behalf of a creditor is appointed over the whole or any part of its undertaking, property or assets; or

e. Seller being a foreign company, any arrangements or events occur under the law of Seller's country of domicile which have a similar effect to those hereinbefore described, then and in any such event Client may forthwith terminate the Contract by notice in writing but without preju-

dice to any right which may have accrued or will accrue to Client thereunder.

## 10. Quality, Liability, Insurance

10.1. Seller shall implement state-of-the-art quality assurance appropriate in type and scope (suitable quality management system e.g. DIN EN ISO 9000 ff) and provide Client with proof of this on demand. Seller shall constantly monitor the quality of its Goods and/or Services. Seller shall additionally conclude a quality assurance agreement with Client as required. Client shall reserve the right to perform on-site testing to check the efficacy of said quality management system.

10.2. Where Seller is responsible for a product defect, Seller shall be obliged upon first demand to indemnify Client in respect of third-party claims for compensation where the cause can be attributed to Seller its own sphere of management or organisation and where Seller bears or would bear liability vis-à-vis third parties.

10.3. Within the scope of Seller's liability for damages in the afore-mentioned, Seller is also obliged to reimburse any expenses incurred by Client from or in connection with a recall campaign. Client shall inform Seller of the content and extent of such recall measures as far as this is possible and can be reasonably expected of same – and shall offer Seller the opportunity to comment in this regard. All other statutory claims shall remain unaffected thereby.

10.4. Seller shall undertake to maintain product liability insurance including an appropriate level of cover for the risk of recall, offering however an insured sum of at least €5 (five) million EURO for each instance of personal injury/damage to property on a lump-sum basis for the term of the Contract, i.e. until expiry of the limitation period for the relevant defect; where further claims to compensation accrue to Client, they shall remain unaffected thereby. Seller shall on request immediately provide Client with written evidence documenting the conclusion and maintenance of such insurance.

## 11. Right of Ownership

Client shall retain the property rights and copyright to all materials such as tools, figures, drawings, calculations, software and all other materials in whatever form, including but not limited to hard copy and electronic form, provided by Client to Seller; same shall not be made accessible to third parties without Client its explicit written consent. Such materials shall be solely used for production on basis of the Order and Seller shall regard them and use them as property of Client; following execution of

the Order, these materials shall be returned automatically to Client. They shall be kept secret from third parties. Any right of retention to such materials shall be excluded in all cases.

## 12. Industrial Property Rights

12.1 Seller guarantees that all deliveries are free of third-party property rights and in particular that delivery and use of the subject of delivery does not infringe patents, licences or other property rights of third parties. Seller shall inform Client about published and un-published owned or licensed property rights and property rights applications related to the Contract or to the provision of deliveries or services.

12.2 Seller shall indemnify Client and Client its customers in respect of third-party claims resulting from any infringement of property rights on first demand and shall also bear all associated costs incurred thereby.

12.3 Client shall be entitled at Seller's expense to obtain permission for use of the respective delivery items and services from their rightful owners.

## 13. Confidentiality

13.1. Seller shall be obliged to maintain secrecy as regards all business and trade secrets of Client, whereby this shall also include all documents made available to Seller by Client, in addition to other information forming the subject of communication. The obligation of secrecy shall also apply following performance of the Contract. A corresponding obligation shall be imposed in writing on any sub Sellers and subcontractors. Should Seller establish that an item of confidential information has been acquired by an unauthorised third party or that a confidential document has been mislaid, Seller shall notify Client in writing at once.

13.2. Seller shall be lastly obliged to likewise treat as confidential conclusion of the Contract itself; references may only be named with Client its prior written consent.

## 14. Compliance with Laws, Executive Orders, Regulations

14.1. Seller warrants that the Goods and Services supplied hereunder will have been produced or provided in compliance with, and Seller will comply with, all applicable laws, orders, rules, regulations, ordinances and conventions, including without limitation, those that relate to equal employment opportunity, wages, hours and conditions of

employment, discrimination, occupational health/safety motor vehicle safety, environmental matters, and anti bribery. At Client's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Client harmless from and against any loss, cost, damage, expense or liability claim (including attorney fees and other costs of defense) arising from or relating to Seller's violation of this Article 14.1.

14.2. Seller is committed in the framework of its corporate responsibility to the protection of human rights, compliance with work standards and rejection of discrimination and slave / child labour during the manufacture of products and the rendering of services and to the avoidance of any adverse effects for man and its environment during performance of its activities.

14.3. Seller confirms that it will not tolerate any form of corruption and bribery or to engage in same in any manner whatsoever.

14.4. Seller is asked to avoid making gifts to staff employed by Client. Conventional presents for invitations of minor value shall constitute an exception to this rule. This shall not only apply to transactions between the Seller and Client, but also to other business partners (own supply chain, intermediaries, staff, competitors and the public authorities).

## 15. Miscellaneous

15.1. Seller shall not be entitled without Client its prior written consent to assign the Contract either partially or in its entirety to third parties. This shall also apply to any awards to sub contractors or sub Sellers intended by Seller.

15.2. The failure of Client to take steps to enforce in any circumstances any of the terms of the Contract on the part of Seller to be observed and performed shall not be construed as or amount to a waiver or dispensation of the liability of Seller in respect thereof and the same shall continue in full force and effect.

15.3. Notices shall be personally delivered or mailed through notary to their address or another address to be given by Parties in writing if it is not agreed otherwise. Notices prescribed in the Turkish Commercial Code Article 18/III (principally notices about default, termination and revoking) shall be deemed valid if sent through notary. Notices shall be valid as from the date which they are deemed served as per the Turkish laws.

15.4. Unless agreed otherwise, the place of fulfillment for the delivery obligation the forwarding address or forwarding





office desired by Client and for all other obligations of both Parties the place of fulfillment is Istanbul.

- 15.5. Where Seller ceases payments, a temporary trustee in bankruptcy is appointed or insolvency proceedings are instituted against its assets, Client shall be entitled to withdraw from the Contract (extraordinarily) either partially or in its entirety.
- 15.6. These General Terms and Conditions exist in English and Turkish versions. In the event of any conflict , the Turkish version shall take precedence over the English version
- 15.7. The legal venue shall be the court with jurisdiction for Client its place of business. Client shall however also be entitled to bring actions at Seller's principal place of business.
- 15.8. Unless agreed otherwise, any stamp duty, taxes and charges arising from the Contract shall be borne by Seller.
- 15.9. The contractual relationships shall be governed exclusively by Turkish law. UN Law on the International Sale of Goods shall be excluded.

# The Royal League

