

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 Japanese version. Both language versions shall have the same legal effect. In case of any conflict, the original Japanese version shall prevail.



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## General Terms and Conditions of Business of ZIEHL-ABEGG Japan KK

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

1. All our deliveries, services, and offers are made exclusively on the basis of the present General Terms and Conditions. Consequently, these General Terms and Conditions also apply to all future business relations even if not expressly agreed upon again in the future.
2. With the receipt of the goods and services by the Customer, at the latest, these General Terms and Conditions are deemed accepted. Counter-confirmations by the Customer with a reference to the Customer's General Terms and Conditions or General Purchase Conditions are hereby rejected. Contrary conditions of the Customer are not binding on us even if the order is based upon them or if the Customer refers to them on forms or in other documents. Conflicting terms and conditions of the Customer are hereby expressly excluded.
3. Rights to which we are entitled according to the statutory provisions in addition to what is provided for in these General Terms and Conditions remain unaffected.

### II. Offers, Scope of Performance

1. For the scope of our deliveries and services, our written confirmation of the order is decisive or, if we submit an offer with a limitation in time and such offer is timely accepted, the offer if the order is not confirmed in due time.
2. Illustrations, drawings, information as to weights, measures, performance, and consumption, and other descriptions of the goods in the documentation that is part of our offer are approximations only, to the extent not expressly referred to as binding. They constitute no agreement on, or guarantee of, a corresponding quality or characteristic of the goods.
3. Unless referring to data contained in our catalogues when placing the order, the Customer is under obligation to provide us with general information as to the purpose of use, type of installation, operating conditions, and other conditions to be taken into account.
4. Protective devices are included in our deliveries to the extent expressly agreed upon.
5. We unrestrictedly retain all exploitation rights under property and copyright law in all cost estimates, drawings,

and other documents; such documents may not be passed on to third parties. Drawings and other documents that are part of our offers must be returned to us without undue delay if the order is not placed with us.

6. Subsidiary agreements have to be prepared in writing and proved by the Party which relies on them.

### III. Particularities in Case of Correspondence by Electronic Communication and Fax

1. If a message (declaration of intent) is sent electronically (electronic communication), such message is deemed received by the recipient when it has been delivered to the recipient's communication device.
2. A message is deemed received by the recipient by mean of message retrieval when it has been made available for retrieval in the relevant part of the sender's communication device and has been retrieved from such part by the recipient.
3. The contracting parties recognize the legal validity of messages transmitted according to nos. 1 and 2 above.
4. If correspondence between the contracting parties is exchanged by fax, the transmission report shall be deemed sufficient evidence of the receipt of our declarations.

### IV. Price

1. In the absence of a separate agreement, our price includes the amount of the goods and/or service to be sold and/or provided and transportation fee to the place designated by the Customer. To these prices, VAT at the statutory rate applicable at the time will be added.
2. If the delivery or service is to be made or provided more than four months after the conclusion of the contract, we reserve the right to reasonably raise our price if there has been a significant increase in the factors prevailing at the time the contract was entered into, that are decisive for the determination of our prices, in particular, in the cost of materials, wages, and public charges.

## V. Reservation of Ownership

1. Until all claims against the Customer (including any and all balance receivables and current account) to which we are entitled now or in the future on whatever legal grounds have been fulfilled, we are granted the following security, which we will release upon request at our choice to the extent that the value of such security exceeds the claims on a permanent basis by more than 20%. For the valuation of the security furnished, receivables are to be assessed at their nominal value, goods in which title is retained are to be assessed at their net purchase price – not including VAT – as stated in the invoice, and in the case of co-ownership, the relevant share in the real value of the principal item shall be decisive. Of the value thus determined, third-party security interests that are of a higher ranking are to be deducted to the extent of the amount of the receivables to be secured with such security interests at the time the request for release is made.
2. All goods supplied remain our property until all our claims under the business relationship, including claims that have not as yet become due, are settled in full. This also applies if the balance is recognized. In this case, the retention of title serves as security for the claim resulting from the balance. The Customer is obligated to handle the goods in which title is retained with due care for the duration of the retention of title. In particular, the Customer is under obligation to adequately insure the goods at their replacement value, at the Customer's own expense, against damage by fire, water, and theft. The Customer assigns to us already now all claims for compensation arising from such insurance. We hereby accept the assignment. If an assignment is not permissible, the Customer hereby irrevocably instructs its insurer to make payments, if any, exclusively to us. Further-reaching claims on our part remain unaffected. At our request, the Customer must furnish us with evidence of the conclusion of the insurance contract.
3. The Customer is entitled to resell or process the supplied goods in the ordinary course of business. In the event of a resale, the Customer's claim against its purchaser, which the Customer assigns to us with all ancillary rights already now to the extent of all our claims, replaces the goods supplied. We hereby accept the assignment. If an assignment is not permissible, the Customer hereby irrevocably instructs its purchaser to make payments, if any, exclusively to us. Until revocation, the Customer is entitled to collect the receivable from its purchaser. All amounts collected must be deposited separately and must be remitted to us by the Customer until all our claims have been settled in full. If the Customer's purchaser pays by bank transfer, the Customer assigns to us already now its claim against the relevant financial institution under such transfer. We accept this assignment already now. At our request, the Customer must give us all information and allow us to inspect the records.
4. To the extent that the Customer processes goods in which title is retained, the Customer causes the contracting parties to agree that such processing shall occur on our behalf so that we become the owners of the new items. The Customer's expectant right (expectant rights) in the goods in which title is retained continues to a corresponding extent in the processed or transformed item. If the processing costs considerably exceed the value of our goods, the Customer causes the contracting parties to agree that the goods shall be processed also on our behalf and that we acquire co-ownership of the new item in proportion to the ratio of the invoice value of our goods to the value of the new item at the time of processing. If the Customer combines goods in which title is retained with another item such that our goods become an essential part of another item that is then to be deemed the principal item, the Customer transfers to us already now the proportionate co-ownership of the new item. The Customer shall keep such new items in custody for us free of charge. In the event of a resale, the foregoing provisions apply correspondingly.
5. If, upon conclusion of the contract, we become aware of facts that give rise to justified doubts about the Customer's creditworthiness, or if the Customer defaults in the settlement of a liability in relation to us, we are entitled to rescind, by a written notice, the contract without setting an additional period for performance and to demand by way of security that the goods of which we are the owners or co-owners be surrendered to us until all our claims have been settled in full.
6. In the event that third parties seize or impound goods of which we are the owners or co-owners or receivables to which we are entitled, the Customer must furnish the third party or the executory officer without undue delay with evidence of our ownership of, or title to, the item; moreover, the Customer must notify us without undue delay of these measures and assist us in whatever manner in the protection of our rights. If we impound the goods, such impoundment shall not to be deemed a waiver of our retention of title or a rescission of the contract.
7. The goods of which we are the owners or co-owners may not be assigned to third parties by way of security, pledged, or encumbered in any other manner.
8. If goods are delivered to countries with a different legal system where the provisions on a retention of title pursuant to nos. 1 to 6 above provide less protection than in the country where our company has its registered office, the Customer hereby grants us a security interest that is customary in such country and that is, in economic terms, equivalent to the retention of title in the country in which our company has its registered office. If further declarations or acts are necessary for this purpose, the Customer



shall do all within his power to grant us this security interest immediately. The Customer shall assist with all measures that are necessary and useful to ensure the validity and enforceability of any such security interest.

## VI. Terms of Payment

1. To the extent not otherwise agreed, our invoices are payable without deduction ten days after they are issued. Despite provisions of the Customer to the contrary, we are entitled to count payments first towards older debts of the Customer, in which case we will inform the Customer of the type of settlement made. If costs and interest have already been incurred, we are entitled to count the payment first towards the costs, then towards the interest, and finally towards the principal performance.
  2. Payments will be deemed made only when we can dispose of the amount. In the case of a check, payment is deemed made only when the check is collected.
  3. If the Customer defaults in payment, we are entitled to claim interest at a rate of 8% above the basic interest rate applicable at the time per annual from the relevant point in time. We reserve our right to assert further claims for damages.
  4. If we become aware of circumstances that give rise to doubts about the Customer's creditworthiness, in particular, if a check cannot be cashed or if payments are suspended, or if we become aware of other circumstances that give rise to doubts about the Customer's creditworthiness, we are entitled to demand the payment of the entire remainder of the debt even if we have accepted checks. In this case, we are further entitled to demand advance payments or the provision of security.
  5. Counter-claims on the part of the Customer entitle the Customer to a setoff only if these claims have been established by a final declaratory judgment or if they are undisputed. The Customer may assert a right to retention only if the Customer's counter-claim is based on the same contractual relationship.
6. If we are liable for non-compliance with bindingly agreed periods and dates for performance or if we are in delay, the Customer's claim is limited to compensation in an amount equal to 0.5% for each entire week of delay, in total, however, to a maximum of up to 5% of the invoice value of the deliveries and services concerned by the delay. Additional claims are excluded unless the delay is based at least on gross negligence.
  7. We are entitled to make part deliveries and to perform in part unless this is an unacceptable burden to the Customer.
  8. Compliance with our obligations to deliver and perform requires the timely and proper fulfillment of the Customer's obligations.
  9. The delivery period is deemed to have been met if the goods have left the works, or if we have given notice of the goods being ready for dispatch, by the time the delivery period expires. The delivery is subject to the condition that we are timely and properly supplied ourselves.
  10. In the event of a delay in delivery, the Customer is entitled to rescind the contract if, upon occurrence of the delay in delivery, the Customer sets an additional period for performance with the warning that performance will not be accepted after the expiration of this additional period and said period expires to no avail.

## VII. Delivery and Service Deadlines

1. Delivery dates or periods, which may be agreed upon as binding or non-binding, must be agreed upon in writing.
  2. We are not liable for delays in delivery or performance that occur due to force majeure or because of events that considerably complicate our delivery or make delivery impossi-
3. le – these events particularly include strikes, lock-outs, official orders, etc., even if the same occur at our suppliers or their sub-suppliers – even if periods and dates have been bindingly agreed upon. Such events entitle us to delay the delivery or service for the duration of the impediment plus a reasonable start-up period. If such events considerably change the economic importance or the content of the delivery or service or if they have a significant impact on our business operation, we may additionally demand that the contract be reasonably adjusted. If the impediment continues more than one month, we are entitled to rescind the contract in whole or in part because of the unfulfilled part of the contract. If we wish to make use of this rescission right, we must notify the Customer of such intent after we have become aware of the importance of the relevant event. If, because of such events, the delivery period is extended or we are released from our obligation to perform, this does not give rise to claims for damages on the part of the Customer. However, we may plead the aforementioned circumstances only if we have notified the Customer accordingly.
  4. If the Customer defaults in acceptance, we are entitled to claim compensation for the damage incurred by us; with the occurrence of the default in acceptance, the risks of accidental deterioration and accidental loss or destruction 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 the related documentation for the operation of the goods for which the software is supplied. The Customer is not permitted to make copies, except for one back-up copy. References to authors, series numbers, and other features serving the identification of the software may not be removed or altered.
2. The Customer is obligated to prevent unauthorized access to the software and the documentation by third parties by taking appropriate precautions. The Customer must store the original data storage media supplied and the back-up copy at a place that is secured against unauthorized access by third parties. The Customer must insistently point out to its staff the duty to comply with the present terms of supply and with the provisions of copyright law.
3. Our liability for the loss or alteration of data is limited to the typical cost of restoration that would be incurred if back-up copies were made at regular intervals and according to risk.

## IX. Passing of Risk and Receipt

1. The risk passes to the Customer no later than with the dispatch of the parts to be delivered, even if part deliveries are made or if we have assumed further obligations, e.g., the shipping costs or delivery and installation. If shipment becomes impossible without fault on our part, the risk passes to the Customer with the Customer's notification of the goods being ready for dispatch.
2. If there is a delay in shipment due to circumstances for which the Customer is responsible, the risk passes to the Customer from the day the goods are ready for dispatch.
3. The Customer must take delivery of the delivered items even if they have minor defects; provided, however, that the Customer is entitled to repair the defects or seek the subsequent performance as defined in clause X. 5 a).

## X. Claims based on Defects

1. The Customer may not refuse to accept deliveries because of insignificant defects. The Customer shall inspect the goods immediately after handover and notify us if there are obvious defects and defects that are identifiable on a due inspection in writing no later than 8 days after handover of

the goods to the Customer. Other (hidden) defects shall be notified to us in writing no later than 8 days after they are discovered; provided, however, that no (hidden) defects shall be notified to us 6 months after the handover of the goods to the Customer. Notifications of defects shall be sent in writing to our head office; notifications of defects to field staff, carriers or other third parties are not regarded as submitted in due form and time.

2. We assume liability for a specific application or specific suitability only if this was agreed explicitly in writing. Otherwise, the Customer bears the risk of suitability and utilization. If we informed the Customer of technical framework conditions or other specifications in regard of utilization, the Customer shall be responsible for compliance. It shall inform its buyers of these specifications and oblige them to comply. Our liability is excluded for defects that result from use of the goods in a way that does not conform to the specifications. Claims based on defects are excluded in particular if and insofar as damage to the delivered item or to other assets of the Customer is caused as follows:
  - a. incorrect processing, assembly or treatment;
  - b. incorrect installation of the delivery item by the Customer or a third party, except where the incorrect installation is based on our instructions, whereby our field staff are not authorized to issue instructions;
  - c. noncompliance with instructions on commissioning, possible applications and operation of the delivery item contained in the documentation of the delivery item, operating instructions or instructions that we issued;
  - d. normal wear and tear that cannot be ascribed to production or material defects;
  - e. inappropriate handling or repairs of the goods by the Customer or third parties that were carried out inappropriately, in particular on interference by nonqualified persons or use of nonoriginal spare parts or resources.

We do not assume any liability either for defects for which the Customer is responsible or that are due to a technical cause other than the original defect.

3. If a defect exists and the goods must be returned to us, the return shipment may be made only with our prior consent. Return shipments made without our prior consent need not be accepted. In any such case, the Customer must bear the cost of the return shipment.
4. If, due to a justified notification of defects, goods are repaired or a replacement delivery is made, the provisions in Section VII concerning delivery periods apply correspondingly.



5. The existence of a defect that has been established as such and that has been notified to us in due form and time gives rise to the following rights of the Customer:
- a. If a defect exists, the Customer may first demand that we remove the defect or make a replacement delivery ("subsequent performance"). We will choose in our discretion whether to newly deliver the item or whether to remove the defect, unless clause X. 5 c) applies. If the defect is removed, in so far as the notification of defects proves justified, we are obligated to bear the following direct expenses, borne by us, necessary for the removal of the defect, in particular, transportation and travel expenses and the cost of our own labor and materials, to the extent that such costs and expenses are not increased due to the fact that the goods have been brought to a place other than the delivery address. This is limited to those costs that arise or would arise in regard to the delivery address for the goods. If the goods are shipped to an address other than the delivery address, the Customer must bear the extra costs that this causes, if the shipment was not part of the delivery contract between the Customer and us.
  - b. We shall be entitled at our option to employ third parties to carry out repair works or a replacement delivery. This does not establish a contractual relationship between the Customer and the third party. In this case, our liability does not go further than if we had carried out the works or the delivery ourselves. Additionally, if an attempt at subsequent performance fails, subject to clause X. 5 c) we have the right to make a new attempt, again reserving the right to choose between a repair and the new delivery of the item. Only when the repeated subsequent performance fails, too, does the Customer have the right to rescind the contract or to reduce the purchase price.
  - c. Regulations in relation to a subsequent performance, for example pursuant to clause X. 5 a) or X. 5 b), do not apply insofar as these regulations would cause an unacceptable burden to the Customer, for example in the case of an unjustified refusal or unacceptable delay of the subsequent performance.
  - d. If a notification of a defect by the Customer proves to be unjustified, the Customer must reimburse us for all costs and expenditure that this caused.
6. The limitation period for the Customer's claims that are based on defects is one year unless the defective item has been used for a building in accordance with its usual manner of use and has caused a defect of the building. The one-year limitation period equally applies to tort claims that are based on a defect of the goods. The limitation period begins to run with the delivery of the goods. The statutory limitation periods apply to losses resulting from a breach of

guarantee or from death, bodily injury or damage to health, for willfulness and gross negligence and for claims based on mandatory statutory provisions regarding product liability. If we make a statement in respect of a claim based on defects that has been asserted by the Customer, such statement is not to be deemed a commencement of negotiations concerning the claim, or the circumstances giving rise to the claim, if we fully reject the relevant claim. The Customer must in all cases prove that the defect existed already at the time of delivery.

## XI. Liability

1. We are liable without limitation for losses resulting from a breach of guarantee or from death, bodily injury or damage to health. This applies as well if we or our senior executives or vicarious agents are liable for willfulness, fraudulent misrepresentation or gross negligence.
2. We are liable for slight negligence only insofar as material obligations are violated that result from the nature of the contract and are of particular importance for achieving the purpose of the contract and where the Customer relies and may rely on compliance with them. In case of a breach of a material contractual obligation, default and/or impossibility, the Customer's claim is limited to damages and reimbursement of expenses for losses that are typical for the contract and are foreseeable.
3. The above provisions do not affect mandatory statutory liability for product defects.
4. Claims by the Customer for reimbursement of expenses are excluded, unless a reasonable third party would also have incurred these expenses. In addition, claims for damages or reimbursement of expenses – for any legal reason whatsoever – that go beyond the provisions of Article XI (1) to (3) are excluded.
5. Our liability for essential third-party products is limited to assignment of the claims based on liability for defects against the supplier of the third-party products. This does not apply if these claims against the supplier are not legally enforceable or if this is unacceptable for the Customer.
6. No repair of defects, replacement delivery or payment of damages may be regarded as recognition of a legal obligation unless in a specific case we agreed otherwise in writing.

## **XII. Other Duties by the Customer, Export Control**

1. The Customer may not alter the goods in any respect that is relevant for safety; in particular, the Customer may not alter or remove existing warnings of dangers in case of improper use of the contractual goods. If this duty is violated, the Customer must internally indemnify and hold us harmless from and against product liability claims of third parties to the extent that the Customer is responsible for the defect giving rise to liability.
2. If we must issue a product recall or a product warning because of a product defect concerning the goods, the Customer will assist us and take all reasonable measures ordered by us. The Customer is obligated to bear the cost of the product recall or product warning to the extent that according to the principles of product liability law, the Customer is liable for the product defect and the damage sustained. Further-reaching claims on our part remain unaffected.
3. The Customer shall notify us without undue delay of any risks in the use of the contractual goods and of possible product defects of which the Customer becomes aware.
4. In particular, the Customer shall ensure that goods are not used, either directly or indirectly, for a purpose that is connected in any way to chemical, biological or nuclear weapons and their carrying systems. Furthermore, the Customer shall ensure that the items are not put, either directly or indirectly, to a military end-use in a country subject to a weapons embargo. The Customer shall not sell, export, re-export, supply, forward the goods or otherwise make them available to persons, companies, facilities, organizations or in countries, either directly or indirectly, if doing so would violate European, German or any other applicable export control laws and regulations, including U.S. provisions relating to (re-)exports.
5. The Customer shall, on request, provide end use certificates in order to prove the final destination and end-use of the products required for the application of any exports licenses or approvals.
6. The Customer shall be fully liable for any loss suffered by us that has been caused by its failure to comply with the applicable export control provisions, including US (re-) export provisions.
7. The performance of the contract and corresponding obligations are subject to the condition that the required export or transfer authorizations, approvals or any other authorizations stipulated by foreign trade law or clearances by the competent authorities are issued and that there are no other legal restrictions owing to provisions of export control law that must be complied with.

8. The Customer shall be responsible for all taxes, charges and duties in connection with the service outside Japan and compensate us if applicable.

## **XIII. Confidentiality**

The contracting parties are under obligation to maintain, for an unlimited period of time, the confidentiality of any and all information that becomes available to them and is referred to as confidential or can be recognized as a trade or business secret according to other circumstances, and they may neither record nor pass on or exploit such information. The contracting parties shall ensure through adequate contractual arrangements with their employees and agents that the latter, too, refrain for an unlimited period of time from the exploitation, circulation, or unauthorized recording of such trade or business secrets on their own behalf.

## **XIV. Miscellaneous**

1. The transfer of rights and obligations of the Customer to third parties is subject to our written consent.
2. The legal relations between the contracting parties shall be governed by the laws of Japan.
3. Regarding legal relations between merchants the exclusive place of jurisdiction for all disputes arising from the business relationship between the contracting parties shall be the place where our company has its registered office.
4. The place of performance for all performances owed by the contracting parties shall be the place where our company has its registered office.
5. If a provision in this agreement is or becomes invalid or impracticable in whole or in part or if there is a gap in this agreement, this shall not affect the validity of the remaining provisions hereof. Instead of an invalid provision the statutory provisions shall apply. If a provision in this agreement is or becomes unenforceable and the statutory provisions should result in a unreasonable solution for either Party, a provision corresponding to what would have been agreed upon according to the purpose of this agreement if the contracting parties had considered the relevant issue from the beginning shall be deemed agreed upon. The preceding sentence shall apply correspondingly in the event of a gap.







# The Royal League

