

Movement by Perfection



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

# General Terms and Conditions of Business

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.



## Content

1. General	3
2. Quotations, Orders and Confirmation	3
3. Price and Payment	3
4. Delivery and Service Periods	4
5. Transfer of Risk and Possession	4
6. Claims Based On Defects	4
7. Warranty and Limitation of Liability	4
8. Force Majeure	5
9. Suspension and Termination	5
10. Confidentiality	5
11. Non-Assignment	6
12. Waiver	6
13. Severability	6
14. Governing Law and Jurisdiction	6
15. Taxes, Duties and Charges	6
16. Survival of Rights	6
17. Headings	6
18. Language	6



## **General Terms and Conditions of Sale of ZIEHL-ABEGG Vantilator ve Motor San ve Tic. Ltd. Sti.**

Seller (as defined below) hereby expressly rejects the applicability of any general conditions of the Customer (as defined below) THESE GENERAL TERMS AND CONDITIONS OF SALE CONTAIN LIMITATIONS OR EXCLUSION OF LIABILITY.

### **1. General**

- 1.1. These General Terms and Conditions of Sale ("Conditions") govern the offering, sale and delivery of all goods and/or services (the goods and services herein both separately and jointly referred to as the "Goods") from or on behalf of ZIEHL-ABEGG Vantilator Ve Motor San. Ve Tic. Ltd. Şti. ("Seller") to customer ("Customer") and apply to all similar dealings between Seller and Customer.
- 1.2. These Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Goods and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer. Failure of Seller to object to terms and conditions set by Customer shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither Seller's commencement of performance nor Seller's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these Conditions differ from any terms and conditions of Customer, these Conditions and any subsequent communication or conduct by or on behalf of Seller, including, without limitation, confirmation of an order and delivery of Goods, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Goods by Seller, as well as acceptance by Customer of any delivery of Goods from Seller shall constitute an unqualified acceptance by Customer of these Conditions.
- 1.3. These Conditions may only be varied or waived by a duly executed written agreement between Seller and Customer.
- 1.4. By contracting on the basis of these Conditions, Customer agrees to the applicability thereof in respect of future dealings as described in Article 1.1, even if this is not expressly stated. Seller shall be entitled to update and/or amend these Conditions regularly and by and as of the moment of notifying Customer of such update or amendment or by sending Customer the updated or amended Conditions, these revised Conditions shall apply to all dealings between Seller and Customer.

### **2. Quotations, Orders and Confirmation**

- 2.1. Quotations, made by Seller in whatever form, are not binding upon Seller and merely constitute an invitation to Customer to place an order. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller in writing ("Seller's Confirmation"). Seller shall be entitled to refuse an order without indication of its reasons.
- 2.2. Statements and agreements made by Seller's employees, officers, representatives and/or agents are not binding upon Seller unless, and only to the extent that, these are confirmed or made in writing by duly authorized representative(s) of Seller.

### **3. Price and Payment**

- 3.1. In the absence of separate agreement, the prices of Seller are ex works including loading at our works, but excluding packaging. To these prices, VAT at the statutory rate applicable at the time will be added.
- 3.2. Seller reserves its right to increase the price of the Goods still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to: products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Customer of such increases.
- 3.3. Unless expressly stated otherwise in Seller's Confirmation, payment shall be made on the basis of net cash, to be received by Seller within thirty (30) days following the date of Seller's invoice for the Goods by means of transfer into the bank account mentioned on the invoice. All payments shall be made without any deduction on account of any taxes and free of set-off.
- 3.4. Seller shall -without prejudice to any other rights of Seller- charge interest on any overdue payment at the higher rate of either twelve percent (%12) per annum or the highest rate permitted under applicable law per annum, but not to exceed one hundred percent (%100) of the legal interest rate permitted under applicable law, from due

date computed on a daily basis until all amounts outstanding are paid in full. Customer accepts and agrees that all costs and expenses incurred by Seller in regard to collection of overdue payments (including, without limitation attorney's fees, expert fees, court costs and other expenses of litigation) shall be deduct from Customer's account.

- 3.5. Any conflict with regard to the invoice must be notified to Seller within eight (8) days of the date its receipt. Thereafter Customer shall be deemed to have approved the invoice.

#### **4. Delivery and Service Periods**

- 4.1. Unless expressly stated otherwise in Seller's Confirmation, all deliveries of Goods shall be ex works Seller's production facility. Customer shall accept the Goods upon delivery.
- 4.2. Seller shall not be liable for delays in delivery or performance that occur due to:
- Force Majeure as defined under Article 8;
  - Events that considerably complicate the delivery or make delivery impossible – these events particularly include strikes, lock-outs, any foreign or domestic embargoes, seizures, insurrections, enactment of any law, ordinance, regulation, ruling or order, or other work actions or any other accidents, even if the same occur at suppliers of the Seller or their sub-suppliers – even if periods and dates have been bindingly agreed upon.

Such events entitle Seller 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 Seller's business operation, Seller may additionally demand that the contract be reasonably adjusted. If the impediment continues more than one month, Seller is entitled to rescind the contract in whole or in part because of the unfulfilled part of the contract. If Seller wishes to make use of this rescission right, Seller shall notify the Customer of such intent after Seller have become aware of the importance of the relevant event. If the delivery period is extended or the Seller is released from its obligation to perform because of such events, Seller shall not be liable for any direct or indirect damages of the Customer.

- 4.3. Unless expressly stated otherwise in Seller's Confirmation, any times or dates for delivery by Seller are estimates and shall not be of the essence. Seller is entitled to deliver the Goods as stated in Seller's Confirmation in parts and to invoice separately.

#### **5. Transfer of Risk and Possession**

- 5.1. The risk of the Goods shall pass to Customer on delivery.
- 5.2. Goods whose delivery has been suspended by Seller awaiting payment from Customer, as well as Goods whose delivery has been wrongfully rejected or not accepted by Customer, shall be held and stored by Seller at the risk and expense of Customer.
- 5.3. The ownership of the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with Seller unless and until Seller has received payment in full for the Goods, including all secondary costs such as interest, charges, expenses etc.

#### **6. Claims Based On Defects**

- 6.1. Complaints regarding the Goods shall be made in writing and must reach Seller within two (2) days if the defect of the Good is clearly apparent at the time of delivery, and within eight (8) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery. Use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.
- 6.2. Seller shall assume liability for a specific application or specific suitability only if this was agreed explicitly in writing. Seller shall not assume any liability either for defects for which the Customer is responsible or that are due to technical cause other than the original defect.

Defects in parts of the Goods stated in Seller's Confirmation do not entitle Customer to reject the entire delivery of the Goods. Complaints, if any, do not affect Customer's obligation to pay as defined in Article 3. Upon receipt of a notice of defect, Seller has right to repair the Goods without any additional expense to the Customer and/or to replace the Goods with substitute goods without any additional expense to the Customer.

#### **7. Warranty and Limitation of Liability**

- 7.1. In the event of any Goods supplied by the Seller being found to be defective, the Seller shall (at its discretion) repair or replace the Goods. The warranty on Goods supplied shall cease after expiry of twelve (12) months from date of delivery and shall in any event only arise on condition that:
- The Goods shall not have been overloaded nor had any improper use made of them.



b. The Goods shall have been installed in accordance with the wiring and installation instructions provided and the Seller shall have been given access to verify the same.

c. The correct electrical supply specified shall have been used.

d. No repairs shall have been made to the goods other than by the Seller or its authorised agents.

e. The Customer follows the Seller's instructions as to storage, commissioning, installation, operation and maintenance of the goods.

f. Any defect with the goods has not arisen as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

7.2. In no event, whether under contract, statutory law or tort, shall Seller or its affiliated entities, officer, directors, employees, agents, be liable for indirect, incidental or consequential damages, including but not limited to loss of profit, loss of use, loss of production or penalty payments arising from the Article 6 and Article 4 of these Conditions.

7.3. Any information provided by the Seller, in particular its catalogues, brochures and price lists, are only descriptions, markings or reference values and shall be considered as warranted characteristics only if they have been expressly named as such in writing. Any further claims for warranty by the Customer are excluded to the legally permissible extent.

## 8. Force Majeure

8.1. Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws, statutes, ordinances, regulations, legislative measures, acts of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, strike, lockout, slow-down, labour disturbances, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").

8.2. Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other

party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under Seller's Confirmation. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than two (2) months after the agreed delivery date, either Party is entitled to cancel the affected part of Seller's Confirmation without any liability to the other Party.

## 9. Suspension and Termination

9.1. If (a) Customer is in default of performance of its obligations towards Seller, or (b) if Seller has reasonable doubts with respect to Customer's performance of its obligations to Seller and Customer fails to provide to Seller adequate assurance of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of Seller's demand for such assurance; or if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of Seller, Seller shall by notice in writing forthwith

a. demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Customer hereby grants an irrevocable right and license to Seller to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods shall be for the account of Customer; and/or

b. suspend its performance or terminate Seller's Confirmation for outstanding delivery of Goods unless Customer makes such payment for Goods on a cash in advance basis or provides adequate assurance of such payment for Goods to Seller.

## 10. Confidentiality

The contracting parties 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. Customer agrees not to use such information or disclose

such information to others without the Seller's prior written consent. 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. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Customer of any obligation herein, (b) the Customer can show by written records was in the Customer's possession prior to disclosure by the Seller, or (c) is legally made available to the Customer by or through a third party having no direct or indirect confidentiality obligation to Customer with respect to such information.

## 11. Non-Assignment

The Customer shall not assign, licence or sub-contract all or any of its rights or obligations under these Conditions without Seller's prior consent. Seller shall assign, licence or sub-contract all or any parts of its rights or obligations under these Conditions without the Customer's consent.

## 12. Waiver

Failure by Seller to enforce at any time any provision of the Conditions shall not be construed as a waiver of Seller's right to act or to enforce any such term or condition and Seller's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Seller of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

## 13. Severability

In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

## 14. Governing Law and Jurisdiction

14.1. The establishment, validity, implementation and interpretation of these Conditions and further agreements are subject to Turkish Law. In the event of a dispute, the

courts of the locality where the Seller's registered office is established shall be solely competent to take cognisance of all disputes that may arise in relation to agreements in question. The Seller shall nonetheless reserve the right to bring any dispute with the Customer before the courts of the Customer's place of residence.

14.2. Any dispute arising directly or indirectly out of these Conditions shall be resolved exclusively by Istanbul (Anatolia) Courts and Execution Offices.

## 15. Taxes, Duties and Charges

The stamp duty arising from these Conditions and/or all types of relevant taxes, duties and charges shall be payable by the Customer.

## 16. Survival of Rights

The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions which are intended to continue to have effect after such termination.

## 17. Headings

The headings contained in these Conditions are included for mere convenience of reference and shall not affect their construction or interpretation.

## 18. Language

These Conditions exist in English and Turkish versions. In the event of a dispute, the Turkish text shall take precedence in respect of any problems of interpretation.





# The Royal League

