

Translation from German into English

Standard Terms and Conditions of Sale of Rosenberg Ventilatoren GmbH

These Standard Terms and Conditions of Sale of Rosenberg Ventilatoren GmbH (hereinafter referred to as the "Supplier") shall apply to any and all business relations of the Supplier with clients (hereinafter referred to as the "Customer"). They shall apply only to:

- any individual who, upon conclusion of the contract, is carrying on his commercial or independent professional business (entrepreneur);
- public law legal entities or an investment fund under public law.

These Standard Terms and Conditions of Sale shall apply to contracts relating to the sale and/or delivery of moveable property (hereinafter referred to as "Goods"), irrespective of whether the Supplier itself manufactures or purchases the Goods, and associated services. Any rights to which the parties are also entitled over and above the Standard Terms and Conditions of Sale pursuant to the relevant statutory provisions shall remain unaffected.

1. GENERAL

1.1 The contractual relationship between the Supplier and the Customer and any and all supplies and services shall be based on these Standard Terms and Conditions of Sale. Any other purchasing terms and conditions of the Customer are hereby expressly contested. These shall enter into effect as against the Supplier only if the Supplier expressly acknowledges them in writing. The provisions of the contracting rules VOB/B shall not apply to the Supplier's supplies and services.

1.2 A contract shall only be concluded following ordering of the Goods together with written order confirmation by the Supplier. Delivery by the Supplier or a delivery note shall also be deemed an order confirmation. Commercial travellers, commercial agents or authorised representatives who work for the Supplier shall have no power of attorney to conclude contracts on behalf of the Supplier. Agreements concluded with them shall become binding only upon written confirmation by the Supplier.

1.3 The Supplier's written order confirmation shall govern the content and scope of the relevant agreement. Ancillary agreements shall be valid only if confirmed in writing by the Supplier.

1.4 The Supplier may render partial performance if this may be reasonably acceptable

for the Customer. Protective equipment shall be delivered if expressly agreed.

1.5 Any illustrations, drawings, statements as to measurement, weight, performance and use, specifications and other information set forth in the samples, catalogues, brochures, price lists, layout and selection programs, quotes or offering documents and other tangible or intangible documents (including in electronic form) of the Supplier shall serve for informational purposes only and shall only become a binding integral component of the contract if the Supplier has expressly agreed thereto in writing. These shall not constitute any agreement or warranty for a quality in the Goods to this effect. The Supplier shall retain title and copyrights in such documents. In the absence of the Supplier's written consent, such documents may not be used, copied or have their contents disclosed to third parties beyond the parameters necessary for contractual performance. Upon request they shall be furnished without undue delay.

2. PRICES AND PAYMENT TERMS

2.1 The Supplier's price list as effective on the delivery date shall apply for supplies and services for which no prices are agreed.

2.2 Prices shall be *ex works*, including costs for loading at the plant. Packaging, shipping, unloading and statutory value-added tax shall be charged in addition.

2.3 If the supplies or services shall be furnished more than four months after conclusion of the contract, the Supplier reserves the right to increase the fee in the event that (1) the governing conditions upon conclusion of the contract for determining the fee have significantly changed, in particular, costs of materials, salaries or public duties, or (2) the Goods were technically improved compared to the date of conclusion of the contract, if and to the extent that the Customer may be reasonably expected to tolerate same.

2.4 Unless agreed otherwise, the Supplier's invoices shall be due and payable immediately without any deduction. Moreover, the payment methods stated in the invoices and the payment dates shall be deemed binding. Deadlines for cash discounts and payment deadlines shall commence upon the invoice date.

2.5 The statutory provision under § 286 (3) of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), pursuant to which the debtor for receivables

is deemed in default within 30 days of the due date and receipt of an invoice, is expressly incorporated by reference. Payments that do not state an invoice number or other repayment terms shall initially be credited against older debts of the Customer. If costs and interest have already been incurred, the payment shall first be credited against the costs and then against the interest and finally against the main receivables. Should receivables have been deferred, they shall be due and payable immediately without deduction if the Customer defaults in payment towards the Supplier or in the event of a material deterioration in the Customer's financial condition. Payment shall only be deemed rendered if the Supplier is able to dispose over the relevant amount. In the event of default in payment, interest at a rate of 8 percentage points above the base interest rate pursuant to § 247 BGB shall be charged notwithstanding additional rights.

2.6 The Customer shall have the right to retain payments or to set them off against counterclaims only to the extent that the Customer's counterclaims are undisputed or have been confirmed in a final and binding judgment.

3. SOFTWARE USE

Should the scope of delivery include software, the Customer shall be granted a non-exclusive, non-transferable right, which may not be sub-licensed, to use the delivered software including its documentation. It shall be furnished for use on the intended Goods. Use of the software on Goods other than those intended shall be prohibited. Unless expressly permitted in the contract or pursuant to § 69d of the German Copyright Act (*Urheberrechtsgesetz, UrhG*), the Customer may not (i) copy or modify the software, (ii) use or enable access to the software in order to make the software's functionality usable for other goods, or (iii) facilitate the foregoing for third parties. The Customer acknowledges that the software constitutes and includes business secrets of the Supplier and/or the software supplier and the Customer agrees not to disassemble, decompile or otherwise reverse engineer the software or permit a third party to do so in order to protect such business secrets and other interests of the Supplier and/or software supplier in the software, except where decompilation is necessary in order to establish interoperability with an independently developed computer program in accordance with § 69e UrhG. This shall require, however, that the Customer requests the Supplier prior to commencement of the decompilation to furnish the information necessary for interoperability. The

Customer agrees not to remove any manufacturer information, in particular, copyright references, and not to modify same without the Supplier's express prior consent. Any and all other rights in the software and the documentation, including copies, shall be retained by the Supplier and/or software supplier. Transfer shall be permissible by way of exception if the Customer proves a legitimate interest in disclosure to third parties while relinquishing own use, in particular, in the event of sale of the complete Goods and if the Supplier has given its express prior consent thereto.

4. RETENTION OF TITLE

4.1 The Supplier shall retain title in the Goods until all of its receivables under the business relationship with the Customer have been paid. If payment by way of cheque or bills of exchange has been agreed with the Customer, the retention of title shall also extend to cashing of cheques/bills of exchange accepted by the Supplier by the Customer and shall not lapse as a result of crediting of the cheques/bills of exchange received.

4.2 The Customer may resell the delivered Goods during the ordinary course of business unless the receivables resulting from such resale have already been assigned to another party. Should the Goods not immediately be paid, the Customer shall resell the Goods only subject to retention of title. The right of resale shall lapse upon default in payment by the Customer.

4.3 In order to secure the Supplier, the Customer hereby assigns to the Supplier the receivables to which the Customer is entitled from resale in an amount equivalent to the final invoice amount including value-added tax based on the delivery transaction between the Supplier and the Customer, irrespective of whether the Goods have been resold prior to or following processing, mixing or combination.

4.4 The Supplier revocably authorises the Customer to collect the assigned receivables in its own name. Upon request, the Customer shall notify the Supplier of the names of the debtors for the assigned receivables and the relevant amounts. The Supplier may notify the debtors of the assignment.

4.5 The retention of title shall extend to the full value of products created from processing of the Supplier's Goods, in which respect, the Supplier shall be deemed the manufacturer and shall directly acquire title or – if the goods of several owners are processed – joint title in proportion to the invoice amounts of the processed goods. Should the Goods be combined with other goods

or irreversibly mixed, and if one of the other goods is to be considered the principal item, then the Customer shall transfer to the Supplier joint title in the new good in the ratio specified in sentence 1. The Customer shall keep the sole or joint title thus created for the Supplier. The same rules shall apply for the newly created goods as for the Goods delivered subject to the retention of title.

4.6 The Customer may not pledge the Goods nor transfer them by way of security. It shall notify the Supplier without undue delay in the event of attachment, seizure or other third party dispositions. The Customer shall bear any costs for intervention by the Supplier.

4.7 Should the Supplier rescind the contract in the event of conduct in breach by the Customer, in particular, default in payment, it may demand recovery of the Goods. The assertion of the retention of title and attachment of the Goods by the Supplier shall not be deemed rescission of the Agreement.

4.8 Should the recoverable amount of all liens of the Supplier under the business relationship with the Customer exceed the quantum of all secured claims by more than 20%, the Supplier shall, at the Customer's request, release an equivalent amount of the liens. The Supplier shall be entitled to select the security to be released.

5. PASSING OF RISK, ACCEPTANCE

5.1 Delivery shall be made *ex works* at the Customer's risk. This shall also apply if and to the extent that the Goods are shipped using the Supplier's own transportation, in the event of partial deliveries or if the Supplier has assumed responsibility for other services, e.g. shipping, delivery or setup.

5.2 In the case of work performance, acceptance shall govern the passing of risk. Acceptance must be effected without undue delay on the acceptance date, or alternatively following notification by the Supplier of readiness for acceptance. The Customer may not refuse acceptance in the event of an immaterial defect. Acceptance shall be deemed to have taken place if the Customer does not accept the Goods within a period of two weeks, or within another reasonable period specified by the Supplier, despite an obligation to do so.

5.3 Should shipping or acceptance be delayed or not take place due to circumstances for which the Supplier is not responsible, risk shall pass to the Customer from the date of notification of shipping or readiness for acceptance.

6. DELIVERY TIME, LATE DELIVERY

6.1 The delivery time shall be based on the agreements between the parties. Compliance therewith by the Supplier shall require that all commercial and technical issues between the parties have been clarified and the Customer has satisfied any and all obligations incumbent upon it such as obtaining necessary official certifications or permits or rendering of any down payment. Should this not be the case, the delivery time shall be extended accordingly. This shall not apply if the Supplier is responsible for the delay.

6.2 Compliance with the delivery deadline shall be subject to proper and timely supply to the Supplier. Should the Supplier be unable to comply with binding delivery times for reasons for which it is not responsible, it shall notify the Customer thereof without undue delay.

6.3 The delivery deadline shall be deemed complied with if the Goods have left the Supplier's plant by expiry of such deadline or notice of readiness for shipping has been given. Should acceptance have to take place in the case of work performance, the acceptance date or alternatively notification of readiness for acceptance shall govern compliance with the delivery deadline, whichever occurs first, except in the event of legitimate refusal of acceptance. The Supplier shall be in default only if performance is due and a written warning has been issued.

6.4 In the event of default of acceptance by the Customer, or should it fail to co-operate or should delivery or acceptance of the Goods be delayed for other reasons for which the Customer is responsible, the Supplier may demand compensation for the damage incurred as a result of such delay, in particular, standard local warehousing costs for storing the Goods, including additional expenses. In the event of default of acceptance by the Customer, the Supplier may also demand the fee for the Goods.

6.5 If the Supplier is in default of delivery and the Customer acquires a compensatory damages claim as a result, the Customer may only demand flat default compensation. This shall be a maximum of 0.5% of the net value for each full calendar week of the delay, up to a maximum total, however, of 5% of the net value, of that part of the overall delivery that may not be used in good time or in accordance with the contract as a result of the delay, subject to the proviso that the Customer specifically proves a claim to default damages in a minimum amount equivalent to the lump sum asserted by it.

6.6 Should the Customer grant the Supplier in default of delivery a reasonable deadline for

performance – taking the statutory exceptions into account – and should such deadline not be complied with, the Customer may effect rescission in accordance with the statutory provisions.

7. WARRANTY

7.1 The statutory provisions shall apply to material defects and defects in title in relation to delivery, unless provided otherwise below.

7.2 The Goods shall have a defect if the Goods do not manifest the agreed quality, in particular, do not comply with any specifications of the Customer for custom manufacture. Otherwise, the statutory provisions shall apply for determining whether a defect is present. No warranty shall be provided in the following cases: inappropriate or improper use, changes without the Supplier's prior consent, improper assembly or start-up by the Customer or third parties, natural wear and tear, improper or negligent handling, improper maintenance, inappropriate operating resources, defective construction work, inappropriate construction site, chemical, electrochemical or electrical influences, unless the Supplier is responsible therefor, and improper repairs by the Customer or a third party.

7.3 The Customer shall inspect the delivered Goods without undue delay following delivery pursuant to § 377 of the German Commercial Code (*Handelsgesetzbuch, HGB*) and shall notify the Supplier in writing without undue delay of any defects, and by no later than within 2 weeks. Should the Customer fail to give notice, the Goods shall be deemed approved, unless the defect was not patent upon inspection. Should a defect appear only later, notice must be given without undue delay, and no later than within two weeks of discovery.

7.4 Should the Goods be defective, the Supplier shall, at its choice, repair the Goods or effect substitute delivery. The Supplier shall bear the costs for substitute delivery or repair (only Section 7.7 shall apply for substitute delivery), including – if this may be reasonably demanded given the specific case – the costs for any necessary provision of its mechanics and temporary workers

7.5 The Customer shall appoint a shipping company to be designated by the Supplier for returning any parts subject to a complaint. Otherwise, the Supplier shall bear the costs for returning parts subject to a complaint only in an amount that would have been incurred had the shipping company designated by the Supplier been used.

7.6 Following consultation with the Supplier, the Customer shall grant the Supplier the necessary time and opportunity to perform any and all repairs

and substitute deliveries that appear necessary to the Supplier; otherwise, the Supplier shall not be held liable.

7.7 Only in urgent cases of risks to occupational safety or in order to avert disproportionate damage may the Customer itself rectify the defect or have this done by third parties and demand compensation from the Supplier for the necessary expenses. The Customer shall notify the Supplier without undue delay of its own rectification of defects and, if possible, shall give prior notice thereof. Moreover, the Customer shall have no right to substitute delivery and the Supplier shall not be liable for costs for rendering substitute delivery that have been caused by the Customer in the absence of the criteria specified above or the Supplier's prior written consent.

7.8 Within the framework of the statutory provisions, the Customer shall be entitled to rescind the Agreement if substitute performance has definitively failed, if the Supplier allows a reasonable grace period, set by the Customer in order to render repairs or substitute delivery due to a defect to expire without result, or if the setting of a grace period was not necessary according to the relevant statutory provisions. If there is only an immaterial defect, the Customer shall only be entitled to reduce the price. Otherwise a right to a reduction of the price shall remain excluded. This shall not apply if the Supplier has maliciously concealed the defect or furnished a warranty.

7.9 If the Goods may not be used by the Customer in accordance with the contract due to default on the part of the Supplier as a result of failure to implement or erroneous implementation of proposals and suggestions that took place prior to or after the conclusion of the contract or due to breach of other ancillary contractual obligations – in particular, a lack of instructions on service and maintenance of the Goods – then the provisions of this Section 7 shall apply *mutatis mutandis*, and other claims on the part of the Customer shall be excluded.

8. INDUSTRIAL PROPERTY RIGHTS

8.1 Should use of the Goods result in a domestic infringement of industrial property rights or copyrights, the Supplier shall attempt to procure the right to ongoing use for the Customer at the Supplier's expense or modify the Goods for the Customer in a reasonable manner such that there is no longer any infringement of industrial property rights.

8.2 Should procurement of a right of use be impossible at reasonable financial terms or within a reasonable period pursuant to Section 8.1, the

Customer and the Supplier may each rescind the Agreement. Moreover, the Supplier shall indemnify the Customer against any undisputed claims or claims confirmed in a final and binding judgment on the part of the relevant rights holder.

8.3 The obligations set forth in Sections 8.1 and 8.2 shall be exhaustive subject to the following provisions. They shall vest only if:

- the Customer notifies the Supplier without undue delay of industrial property rights or copyright infringements asserted;
- the Customer supports the Supplier to a reasonable extent in mounting a defence against the claims asserted or enables the Supplier to implement the modifications pursuant to Section 7.6;
- the Supplier retains the right to take any and all defensive measures, including extrajudicial settlements;
- the infringement of industrial property rights or copyrights is not based on an instruction by the Customer;
- the infringement of industrial property rights or copyrights was not caused by the fact that the Customer unilaterally modified the Goods or used them in a manner that does not comply with the contract.

9. RESCISSION

Any free right of termination on the part of the Customer prior to delivery of the Goods, in particular pursuant to §§ 651, 649 BGB, shall be excluded. Both parties' right of rescission shall be based on the provisions of these Standard Terms and Conditions of Sale and relevant statutory provisions.

10. RIGHT OF RETURN

10.1 The Customer shall have no general right of return concerning the delivered Goods, provided these have been duly and properly delivered in good time.

10.2 Return (for example, because the Goods are not required or were incorrectly ordered) may be effected only following express agreement and consent by the Supplier. Should there be no agreement on the return of Goods between the Customer and the Supplier, the Supplier reserves the right to refuse acceptance of returned Goods.

10.3 Subject to the criteria set forth in Section 10.2, the Goods may only be returned if:

- the net value of the Goods is no less than EUR 100;
- the Goods are no older than one (1) month (delivery date);
- the Goods are in an unused condition, as new and may be resold (in this respect, the

Supplier reserves the right to appraise the Goods);

- the Customer has duly and properly warehoused, stored and handled the Goods; and
- the Customer itself bears the shipping costs for the return such that the Supplier does not incur any costs for the return transport of the Goods.

10.4 In the event of return, the Supplier may demand a cancellation and re-warehousing fee of 30% of the net value of the Goods.

10.5 If the Goods returned are not as new and may not be resold, the Supplier reserves the right to refuse acceptance or to send the Goods back to the Customer. Any and all resultant costs shall be borne by the Customer.

11. LIABILITY

The Supplier shall be liable for compensatory damages – whatever the legal grounds therefor – in the event of wilful or grossly negligent conduct. In the event of ordinary negligence, the Supplier shall be liable:

- in the event of injury to life, limb and health;
- for defects that it maliciously concealed or for whose absence it warranted;
- in cases of mandatory statutory liability, in particular, pursuant to the German Product Liability Act (*Produkthaftungsgesetz*) for the breach of material contractual obligations, limited to the typical and reasonably foreseeable damage upon conclusion of the Agreement.

Otherwise, any liability shall be excluded.

12. FORCE MAJEURE

The Supplier shall not be liable for non-performance or late performance of duties under the Agreement if this is due to events that fall outside the Supplier's reasonable sphere of influence and the Supplier is not responsible therefor, e.g. illegal strikes, unrest, uprisings, fire, floods, storms, explosions, natural events, war, terrorism or earthquake (in each case, an "Event of Force Majeure"). Should an Event of Force Majeure occur, the Supplier shall be discharged from its duty to render performance for the duration of the event, provided the Supplier continues to make reasonable economic efforts to render performance.

13. LIMITATIONS PERIOD

Any and all claims on the part of the Customer – whatever the legal grounds therefor – shall become time-barred 12 months following delivery. For work performance, the limitations period shall

commence upon acceptance. The statutory limitations period shall apply for Goods that were used for a construction in accordance with their usual type of use and that caused such construction to be defective. The special statutory provisions (i) for third-party rights of recovery *in rem* (§ 438 (1) No. 1 BGB), (ii) for liability pursuant to Section 11 and (iii) the limitations periods of the Product Liability Act shall also remain unaffected. Performance of repairs shall not result in recommencement of the limitations period.

14. CONFIDENTIALITY

The parties shall use any and all of the information mutually disclosed to one another and marked as confidential or that is or could be discernable as business or trade secrets based on other circumstances only to the extent necessary for performance of the Agreement, shall keep such information confidential for an indefinite term and shall not record, disclose or exploit same. The parties shall ensure by way of appropriate contractual agreements with those employees and authorised representatives working for them that they shall also indefinitely refrain from any own exploitation, disclosure or unauthorised recording of such business and trade secrets.

15. EXPORT AND CONTROL PROVISIONS

15.1 The Goods and any replacement parts may be subject to the export and/or control provisions of the Federal Republic of Germany or other states. In the event of export of the Goods abroad, the Customer shall be responsible for compliance with the statutory provisions.

15.2 Should the Supplier export or deliver the Goods directly to a third party at the Customer's request and should the Customer not furnish the requisite proof that the Goods are exempted from value-added tax, it shall pay the applicable domestic value-added tax rate.

16. MISCELLANEOUS

16.1 Forum for any and all disputes under the contract between the parties shall be the registered office of the Supplier if the Customer is a fully qualified merchant (*Vollkaufmann*), a public law legal entity or an investment fund under public law. The Supplier may also bring proceedings at the Customer's registered office.

16.2 The Standard Terms and Conditions of Sale and the contract between the parties shall be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. The contract language is German.

16.3 Any conflicting agreements or deviations from this clause must be in writing.

16.4 The assignment of rights and/or assignment of the Customer's obligations under this Agreement with the Supplier shall require the Supplier's prior written consent.

16.5 These Standard Terms and Conditions of Sale are drafted in German and English. In the event of doubts about interpretation, the German version shall be deemed binding.

16.6 The remaining provisions of the Standard Terms and Conditions shall remain binding even if individual clauses should be legally invalid.

Per: October 2009