

General Terms of Sale, Supply and Payment (1/2009)

Konrad Reitz Ventilatoren GmbH & Co. KG, 37671 Hörter-Albaxen, Germany



1. General conditions and scope

These Terms of Sale, Supply and Payment (General Terms and Conditions) shall apply to any mutual claims from or in connection with any contract concluded between the client (Client) and the company (Company). Any regulations deviating from these General Terms and Conditions, in particular any regulations contained in the Client's terms of purchase or General Terms and Conditions, shall not apply unless the Company approves them in writing. The Company shall not be bound by such deviating regulations if the Company does not object to them in any individual case. For the purposes of these General Terms and Conditions, in case of immediate order placement, the delivery note and/or the invoice shall be deemed to be the order confirmation. The silence of the Client regarding the General Terms and Conditions of the Company and/or the acceptance of our deliveries and services shall be deemed to be consent to our General Terms and Conditions. These General Terms and Conditions shall only apply to a person acting in his/her capacity as a business or in an independent profession (entrepreneur), a public law entity or a special fund under public law when concluding a contract.

2. Conclusion of contract

All offers submitted by the Company shall be without engagement as to price, quantity, delivery dates and facilities. Orders shall only be deemed as accepted once they have been confirmed in writing by the Company. The Company's order confirmation shall be decisive for the contents of the contract unless the Company receives a written objection within 14 days after the date of the order confirmation; this shall not apply if the order confirmation deviates from the order to an extent making the consent of the Client unlikely. We reserve the right to effect technical modifications to the extent reasonable also during the processing of the order.

Any agreements on the fulfilment of the contract must be recorded in writing.

The Company shall reserve property rights and copyrights to design documents, including drawings, calculations and electronic data as well as printouts of data. The Company must expressly approve any disclosure to third parties.

3. Prices and payment

The prices are ex works, excluding packaging, freight and insurance; they are net prices exclusive of the statutory VAT valid at the time. Unless otherwise agreed upon, the Company's invoices are due net within 30 days. In case of payment within 8 days after the date of invoice, the Company shall grant a discount of 2%. Repairs and contract work must be paid net immediately upon receipt of the invoice in any case. In case of partial deliveries, the Company shall be entitled to issue invoices on account for the deliveries and services provided. The Client shall only have set-off and/or retention rights if the counterclaim it is entitled to has been determined res judicata, is undisputed and recognised by the Company. The Company shall accept bills of exchange or cheques on account of payment only. All costs and expenses for discounting or collecting the bill of exchange shall be borne by the Client.

Should, after confirmation of order, the Company become aware of circumstances justifying doubts as to the Client's credit worthiness or should the Client be in default with other accounts payable, the Company shall be entitled to effect the delivery for the present or any additional orders only against cash in advance or other security or to rescind the contract in case of non-fulfilment. In such a case the Company shall be entitled to request payment in cash from the Client against the return of the bills of exchange, irrespective of the term of the bills of exchange accepted. The rights according to section 321 of the German Civil Code shall not be affected and deliveries may be stopped and goods in transit may be recalled.

4. Delivery, term of delivery, transport

Delivery shall be effected ex works. The choice of the mode or the route of shipment shall be the responsibility of the Company, unless otherwise agreed upon. The Company shall select the forwarding company, however, any liability for selecting the forwarding company which offers the most favourable or quickest mode of shipment shall be excluded. The transport costs shall be invoiced to the Client. Upon the Client's request and at the Client's expense and for its benefit, the Company shall take out transport insurance. The Company and the forwarding company effecting delivery shall be informed immediately in writing of any losses during transport and damaged packaging.

The term of delivery shall be agreed upon between the contractual parties. The compliance with such agreements by the Company shall be subject to all business and technical issues between the contractual parties being solved and the obligations to be fulfilled by the Client such as provision of the necessary official permits or certificates or advance payment being fulfilled. Should these pre-conditions not be fulfilled, the term of delivery shall be extended accordingly. This shall not apply should the delay be attributable to the Company.

Any modifications or extensions of the original scope of deliveries or services agreed upon after the conclusion of the contract shall extend and/or postpone the original periods and dates of delivery accordingly. The term of delivery shall be deemed to have been fulfilled if the delivery item left the Company's works or the Company announced its readiness for shipment by the end of such term. The Company shall be entitled to make partial deliveries.

Impairment of delivery or performance due to force majeure or as a consequence of labour disputes, official intervention, disruption in operations, difficulties in material procurement and energy supply or other unforeseeable, extreme and other circumstances not attributable to one of the parties, irrespective of whether such circumstances occur in the Company or at its sub-suppliers', shall extend the term of delivery by the duration of the impairment. Cases caused by the Company shall not be covered by this clause. In accordance with the regulations stated above, the Company shall not be responsible for the circumstances mentioned above if they occurred during a delay already ongoing. The Company may only invoke these provisions if it informs the Client immediately about the occurrence and the expected duration of such impairments.

Should the Client suffer a damage due to a delay attributable to the Company, the Client shall be entitled to receive damages. The amount of damages is limited to 0.4% for each complete week of the delay - delayed by individual days are calculated on a pro rata basis - and to a maximum of 4% of the contractual value that could not be put to the intended use due to the delay.

Both claims for damages of the Client due to delay in delivery as well as claims for damages instead of performance exceeding the limits stated in the paragraph above shall be excluded in any case of delay in delivery, even after the expiry of any grace period granted to the Company. This shall not apply to cases of intent, gross negligence or due to injury to life, limb or health, in which liability is mandatory. The Client may only rescind the contract according to statutory provisions if the delay in delivery is attributable to the Company. A change in the burden of proof to the disadvantage of the Client shall not be associated with the provisions above.

In case shipment or service is delayed upon the Client's request by more than one month after the announcement of the readiness for shipment, the Client may be charged with warehousing fees amounting to 0.5% of the price of the items of the delivery, however, not more than 5%, for each month commenced. The contractual parties may prove higher or lower warehousing costs.

5. Passing the risk

The risk shall pass to the Client once the goods leave the Company's works; this shall apply to partial deliveries as well. In case of a pick-up by the Client, the risk shall pass to the Client once the readiness for shipment is announced. Should the dispatch be delayed due to circumstances attributable to the Client, the risk shall pass once the notice of the readiness for shipment was dispatched. In case of services performed, including divisible services performed, these shall be deemed to have been accepted 10 days after provision of such services unless a formal acceptance or another arrangement was agreed upon. In case of the installation of equipment or accessories to be effected by the Client, the installation instructions of the Company must be complied with. Otherwise, the Company shall not be liable for any damage or defects resulting therefrom.

6. Retention of title

The delivery item shall remain the property of the Company (reserved items) until full payment of all accounts receivable including all incidental claims payable by the Client to the Company. In case additional installation services are required, the ownership to the reserved item shall only be passed on to the Client upon receipt also of that part of the payment attributable to the installation services. For the time period from the passing of risk until the transfer of ownership, the Client must take out insurance against theft, breakage, fire, water and other damage for the reserved items. The Client hereby assigns to the Company any rights from the insurance policies and its claims towards the insurers. The Company hereby accepts the assignment. In case of a current account, the goods will serve as collateral for any balance claim by the Company. The Client may not pledge the reserved item, nor assign it by way of security. In case of attachment or seizure or other orders, the Client must inform the Company without delay. In case of any kind of

contract violation, the Client agrees to return any reserved items in its possession at its own expense upon the Company's request without being obliged to set a grace period. This shall also apply in case of any over-indebtedness or suspension of payment by the Client, in case of any petition for the commencement of insolvency proceedings against the Client's assets being filed or in case the Client's economic situation deteriorates in any other manner. The return of the reserved items or the attachment by the Company shall only constitute a rescission of contract if the Company expressly declares such rescission.

The Client shall be entitled to resell the reserved item in the regular course of business. The Client hereby assigns to the Company all claims from such re-sale to third parties up to the amount of the invoice (including VAT). The Company hereby accepts the assignment. After such assignment, the Client is entitled to the collect such accounts receivable. Should the Client be in default of payment, a petition for the commencement of insolvency proceedings shall be filed; should the Client be over-indebted, suspend payments or should its economic situation deteriorate in any other manner, the entitlement of re-sale and the collection authorisation shall be deemed to be void. In such a case, the Company's right to collect the assigned accounts receivable itself shall not be affected thereby and the Company shall be entitled to exercise such right and request that the Client inform its creditors of the assignment. Nevertheless, the Company shall be entitled to request at any time that the Client informs the Company of its creditors and of the assigned accounts receivable and that it provides all required information and the associated records. The handling and processing of the goods by the Client shall be effected in the name and on behalf of the Company.

Should the reserved item be processed together with other items not in the Company's property, the Company shall acquire co-ownership to the new item in proportion to the value of the reserved item to the other processed items at the time of processing. Any item resulting from such processing shall be subject to the same provisions as other reserved items (see above).

Should the reserved item be combined with other items not in the Company's property in such a way that it becomes a material part of the combined item, the Company shall acquire co-ownership to the new item in proportion to the value of the reserved item to the other combined items at the time of combination. Should the combination be effected in such a way that the item of the Client is to be deemed to be the principal item, it shall be deemed agreed upon that the Client transfers co-ownership to the Company on a pro-rata basis. The Client shall store such items subject to co-ownership for the Company. The provisions for the combination shall also apply to any case of amalgamation or mixing accordingly.

The Company agrees to release the securities it is entitled to to the extent their value exceeds the accounts receivable to be secured by more than 20%.

7. Warranty

Defects in quality become statute-barred after 12 months. This shall not apply to the extent the law in accordance with section 438, paragraph 1, no. 2 (Civil works and items for civil works), section 479, paragraph 1 (Rights of recourse) and section 634a, paragraph 1, no. 2 (Constructional defects) of the German Civil Code provides for longer fixed time periods as well as in case of injury to life, limb and health, in case of the supplier's intentional or grossly negligent breach of duty or in case of fraudulent concealment of a defect. The statutory regulations on the suspension of the statute of limitation, suspension and re-start of the fixed periods shall not be affected thereby.

Any claims of the Client based on defects require that the Client fulfilled its obligations of inspection and filing a complaint in accordance with section 377 of the Commercial Code. In case of defects, the Company may grant warranty either by way of supplementary performance or by new delivery. The Client shall only be entitled to a right of reduction in price or rescission of the contract or, in case of a service contract, the right to remedy the defect itself according to section 637 - if supplementary performance was unsuccessful twice. Rescission of the contract shall be excluded if the defect is immaterial. Claims based on defects shall not be in effect in case of only immaterial deviation from the agreed upon properties, in case of only immaterial impairment of the usability, in case of natural tear and wear and damage resulting after the passing of risk from faulty or negligent treatment, improper use, excessive stress, unsuitable equipment or due to special external influences not provided for in the contract. Any warranty shall become void if the Client effects repairs or interventions itself or has them effected by persons not authorised by the Company, provided the malfunction is in connection thereto.

Repairs under warranty are free of charge in case of free-of-charge delivery of the delivery item to the works of the Company provided it is proven that the defects are a consequence of a circumstance occurred before the passing of risks.

The Client's claims concerning the expenses required for supplementary performance, in particular transport, travel, working and materials costs shall be excluded to the extent the expenses are higher due to the fact that the delivery item was subsequently relocated from the Client's establishment to another location unless such relocation is in compliance with the intended use. Upon consultation with the Company, the Client must grant to the Company the required time and opportunity to effect all supplementary performance and replacement deliveries the Company deems necessary, failing this, the Company shall be exempt from liability or any consequences thereof. Only in urgent cases of danger to the operating safety and/or for the avoidance of disproportionately severe damage, in which case the Company must be informed immediately, shall the Client be entitled to remedy the defect itself or have it remedied by third parties and to demand reimbursement of the expenses from the Company.

The Company shall be entitled to refuse the remedy of defects in case the Client is in default with the fulfilment of its obligations. A right of retention due to defects in delivery up to three times the value of the expenses required to remedy the defects shall not be affected thereby.

Art. 8 (Other liability) shall apply to claims for damages. Any claims of the Client against the supplier and its vicarious agents due to a defect of quality in addition to or other than the ones stated in this Art. 7 shall be excluded.

8. Other liability

Any claims for damages and expenses - in particular concerning consequential damage (incl. loss of profits) - of the Client, irrespective of the legal ground, in particular due to violation of duties from the obligation and from tortious acts shall be excluded. The liability of the Company for any damage from the injury of life, limb and health, for claims based on the product liability law, for express written guarantees (with the exception of consequential harms caused by a defect not covered by the guarantee) as well as for any foreseeable damage caused due to the Company's intent or gross negligence shall not be affected thereby. The Company shall be liable for material damage as a consequence of slight negligence to the extent it is able to achieve coverage from its existing general liability insurance.

The Company shall be liable for any culpable violation of material contractual obligations for the purposes of section 307, paragraph 2, no. 2 of the German Civil Code also in case of slight negligence, however, only for foreseeable, typical damage and only up to the amount of the insured sum of its general liability insurance, however, no less than up to an amount of EUR 500,000.00.

To the extent the Company's liability for damages to the Client is excluded or restricted, this shall also apply to the personal liability for damages of its employees, staff members, workers, representatives and vicarious agents. A change in the burden of proof to the disadvantage of the Client shall not be associated with the provisions above. To the extent the Client is entitled to claims for damages in accordance with this Art. 8, they shall become statute-barred with the expiry of the period of limitation applicable to claims from defects of quality in accordance with Art. 7. In case of claims for damages in accordance with the product liability law, the statutory statute of limitations shall apply.

9. Choice of law, place of performance and place of jurisdiction

The legal relationship between the Company and the Client is subject to the laws of the Federal Republic of Germany. The application of the UN Sales Convention shall be excluded. The exclusive place of performance for both contractual parties shall be the Company's business seat in 37671 Hörter-Albaxen, Germany. The place of jurisdiction for all disputes from the contractual relationship as well as concerning its establishment and validity shall be Hörter-Albaxen. However, the Company shall be entitled to assert claims at any other statutory place of jurisdiction.

10. Modifications

Modifications to these Terms and Conditions or to any other contractual agreements must be in writing.

11. Severability

Should individual parts of these General Terms and Conditions be ineffective due to statutory provisions or individual contracts, the effectiveness of the other provisions shall not be affected thereby. The Parties agree to replace the ineffective provision with a provision which comes as near as possible to the economic purpose of the ineffective provision.