



Terms and Conditions of Trading  
Of  
FlaktGroup Ireland Ltd

## 1.1 Definitions

In these Terms and Conditions the following expressions shall have the following meanings:

“Company” means FläktGroup Ireland Limited and any subsidiary thereof.

“Company’s Suppliers” means any person, firm, association or partnership from whom Products or any component part of Products are purchased by the Company.

“Customer” means any person, firm, association or partnership to whom Products are sold under these Terms and Conditions.

“Products” means all articles and commodities manufactured and/or sold by the Company and/or goods and services provided by the Company.

In these Terms and Conditions words imparting the masculine gender shall be deemed to include the feminine and neuter gender.

The headings in these conditions are for convenience of reference only and shall not affect the construction or interpretation thereof.

1.2 These conditions shall form part of all contracts for the supply of Products by the Company to the Customer and shall prevail over any inconsistent terms or conditions contained in or referred to in any order or communication from the Customer and all such conditions or stipulations contrary to these conditions are hereby excluded. No variation of these Terms and Conditions shall be applicable unless agreed to in writing by the Company. A waiver by the Company of any default by the Customer shall not be deemed to be a continuing waiver or a waiver of any other default of the Terms and Conditions, but shall apply solely to the instance to which the waiver is directed. If any provision hereof is determined to be illegal, against public policy or otherwise unenforceable, any other provision hereof and each such provision shall at all times be considered separate and severable in this regard.

## 2. Orders

2.1 The contract shall be deemed to be entered into either (1) when, upon receipt of an order, the Company has sent an acceptance either in writing or electronically within the time limit (if any) fixed by the Customer, or (2) when a tender is accepted, subject to Clause 3.

2.2 The Company will accept only orders for its Products in writing on the Customer’s official billhead or order form or by email or fax. Verbal orders will be

processed on receipt of written confirmation from the Customer.

2.3 The Customer shall not assign the contract to any other party without the written approval of the Company.

## 3. Validity of Tender / Quotation

3.1 Tenders which do not stipulate an acceptance date are not binding.

3.2 The prices and times for delivery given are without engagement. A tender / quotation does not constitute an offer but is an invitation to treat.

3.3 The acceptance of the Company’s tender must be accompanied by sufficient information to enable the Company to proceed with the order forthwith; otherwise the Company is at liberty to amend the tender prices to cover any increases in cost which have taken place after acceptance. Any samples submitted must be returned to our works, carriage paid, within one month from the date of dispatch, or paid for.

3.4 Unless otherwise specified, all illustrations, drawings and printed descriptions submitted with the Company’s tender are approximate only. Tenders and enclosures are to be considered as confidential documents of which the Company retain the copyright. They remain the Company’s property and must not be made accessible to third parties or reproduced without the Company’s written consent and must be returned to the Company on request. The Company reserves the right to make any alterations necessary.

3.5 All descriptive and forwarding specifications, drawings and particulars of weights and dimensions submitted with the Company’s tender are approximate only, and the descriptions and illustrations contained in the Company’s catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract.

3.6 After acceptance of the Company’s tender, one set only of certified outline drawings will be supplied free of charge, if desired.

## 4. Regulations in Force at Destination

4.1 The Customer shall inform the Company of all laws, governmental and other regulations which must be observed during the execution of the contract.

## 5. Limits of Contract

5.1 The Contract is the entire agreement between the Parties. All contract amendments must be agreed in writing by both the Company and Customer.

- 5.2 The contract includes only the material and work specified in the Company's acknowledgment of order. Any material or work not referred to therein will be charged for as extra.
- 5.3 Erection is not included unless specifically agreed in writing.
- 5.4 Weights given for goods and packing are approximate.

## **6. Packing**

- 6.1 Packing will be charged for as extra and is not returnable, unless the stipulation is made that it remains the Company's property, in which case it must be returned to the Company or the Company's Suppliers, carriage paid.

## **7. Specifications**

Where the Customer is to supply the Company with any specifications regarding the Products being supplied hereunder, the Company shall be under no obligation to commence production or take into stock any component parts for the products to be manufactured until such specifications are delivered to the Company.

## **8. Tests and Performance**

- 8.1 The Company's products are carefully inspected and, where applicable, submitted to the Company's standard tests at the Company's works before despatch. If special tests or tests in the presence of the Customer or the Customer's representative are required they, unless otherwise agreed, must be made at the Company's works and will be charged extra, and in the event of any delay on the Customer's part in attending such tests after seven days notice that the Company is ready, the tests will proceed in the Customer's absence and shall be deemed to have been made in the Customer's presence.
- 8.2 If as a result of such inspection and checking the Customer shall be of the opinion that any Products are defective or not in accordance with the contract, the Customer shall state in writing his objections and the reasons therefor within ten days.
- 8.3 Any performance figures by the Company are based upon the Company's experience and are such as the Company expect to obtain on test. The Company will, however accept no liability if those figures are not obtained unless the Company specifically guaranteed them under an agreed sum, as liquidated damages, subject to the recognized tolerances and rejection limits applicable to such figures.
- 8.4 The Customer assumes responsibility for the specified capacity and performance of the goods being sufficient and suitable for the Customer's purpose.

## **9. Risk**

- 9.1 The risk in the Products shall pass in accordance with the International Rules for the Interpretation of Trade Terms (Incoterms) of the International Chamber of Commerce in force at the date of formation of the contract. Where no indication is given in the contract of the form of sale, the Products shall be deemed to be sold "ex-works".
- 9.2 The Company is not responsible for loss, damage or breakages in transit, even when for the convenience of the Customer, the Customer's estimate includes the cost of delivery to a place other than "ex-works", unless otherwise expressly agreed to. Carriers receipts should be signed "goods received unexamined" and if a case or its contents are found to be damaged a claim for compensation must be made against the carrier within three days from receipt of the goods.
- 9.3 Insurance against damage of any kind is the responsibility of the Customer. Even if insurance cover is arranged by the Company, it will be taken out on behalf of the Customer at his expense and risk.
- 9.4 The Customer must provide sufficiently good road facilities to the erection site.
- 9.5 The Company shall not accept responsibility for the condition of Products incorrectly stored at the Customer's premises. If products are collected from the Company's depot, the Customer shall be responsible for any damage or defect which may occur to the Products as a result of their bad packing or exposure to weather conditions.

## **10. Imprint**

The Company reserves the right to attach its imprint to all goods unless otherwise advised.

## **11. Trademarks and Intellectual Property rights**

The Customer agrees not to apply any of the Company's identification markings (including but not limited to trademarks, trade name, patents, intellectual property rights, part numbers and other distinctive marks, signs, labels or imprints specified by the Company) or markings confirming similar characters on any goods which are distributed by the Customer to any third party without prior written authorisation from the Company. Intellectual Property rights shall remain property of the Company and are not transferred to Customer.

## **12. Custom Built Equipment**

Where the Products have been manufactured or constructed according to designs or configurations specified or supplied by the Customer, the Customer represents and warrants to the Company that the

Products as so designed or configured do not offend any patent right, copyright, design right or any other right of any third party and that the Customer has or will have satisfied itself that the products are designed, constructed and operational so as to be safe and without risk to the health and safety of workmen or others using or coming into the proximity of the same. The Customer shall indemnify the Company against all actions, suits, claims, demands, charges, costs and expenses which the Company may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of the representation and warranties on the part of the Customer contained in this Clause.

### 13. Patent Information

If notified in writing within 10 days after service of any action brought against the Customer or any Customer of the Customer, based on a claim that the Products purchased hereunder or any parts thereof infringe a patent in the Customer's country of domicile, the Company will hold the Customer harmless with respect to any costs and damages which may be awarded in any such action. Provided always that this indemnification shall not apply to any infringement which is due to the Company having followed a design instruction furnished or given by the Customer, or to the use of the products in a manner or a purpose or in a foreign country not specified by or disclosed to the Company. The Company may, at its election, assume full control and undertake the defence of any such action, the Customer and those within its control shall co-operate fully with the Company in the prosecution of the said defence or settlement, at the Company's expense. Provided, also, that his indemnity is conditional on the Customer not making any admission which might be prejudicial to the contract of such defence or settlement and on the Customer affording the Company all available assistance for such purposes. The Company shall not be liable for any consequential damages which may result from any such alleged infringement or action.

### 14. Prices

14.1 All prices are strictly net unless otherwise quoted. Custom duties, consular fees and other taxes, duties or fees charged in accordance with the laws or regulations of the country of destination or any other country through which the Products are transported as well as any costs connected therewith shall be borne by the Customer. The Company shall be entitled to add to the price agreed upon the amount of any tax or other governmental charges which the Company must pay in respect of the Products (including without limitation value added tax and import duties) such taxes or governmental charges now in effect or as may hereafter be imposed or any increase therein prior to delivery.

- 14.2(a) The prices, when quoted in Euro are subject to exchange rate variations appropriate to the currency of the Company's Supplier and shall be determined at the rate prevailing on the date that payment is transferred by the Company to the Company's Supplier.
- (b) When packing, freight, insurance and customs duty are included in the prices or are quoted for at fixed rates, they are subject to alteration should essential modifications to the tariffs on which they were based be made. Insurance against war risks during transport is not included in the Company's prices.
- (c) If existing regulations and method of procedure in connection with export, transit, import and manufacturing are altered, the company reserve to themselves, the right to modify contracts accordingly.
- (d) Price adjustments after conclusion of the contract shall be made provided that:
- Sliding prices have been agreed upon:
  - The delivery time is subsequently extended for one of the reasons stated in Clause 20:
  - The extent of the agreed delivery or work involved has been changed or
  - The goods or execution have been changed because the information submitted to the Company by the Customer did not correspond to the actual circumstances or was incomplete
- (e) If at any time before delivery of the Products the cost to the Company of completing the contract is increased by reason of an increase in the cost of labour or materials or for any other reason outside the control of the Company, then the price shall be increased proportionately and the Customer agrees to pay such increased price.

### 15. Terms of Payment

- 15.1 (a) Payments are to be made according to agreement. Standard company payment terms are 30 days from end of month unless otherwise agreed in writing by the Company and Customer. Time for payment shall be of the essence. In the event that Customer disagrees with any amount due, it shall communicate such disagreement to the Company with the reasons for such disagreement, in writing, within 10 working days of the invoice date.
- (b) If partial consignments are invoiced, payment shall be made for each individual consignment in accordance with the agreed terms of payment. Payment is deemed effected when transferred to the Company's Supplier. Should delivery, erection, setting to work of or acceptance tests on completed material be delayed by causes beyond the Company's control, the terms of payment remain the same as if delivery and setting to

work of the material had taken place at the appointed times. Further, late delivery of unessential parts (the lack of which does not prevent the plant from being used) or adjustments work to be carried out after setting to work and which comes under the terms of the guarantee, does not modify the stipulated terms of payment and guarantee.

- (c) If the Customer does not observe the agreed due dates of payment, the Company has the right to charge the interest set out by law on the overdue amounts. Payment of such interest does not release the Customer from his obligation to make payments on the agreed dates.
- (d) The Customer shall not make any set-off against the sum due or raise any counter-claim in diminution of the sums due but must pay the purchase price and other charges on the date or dates agreed. Any complaints regarding short delivery, alleged defects or faults in the Products or failure to deliver in accordance with the terms of the contract shall not release the Customer from its obligations to pay the entire purchase price and other charges due. The Company shall be notified immediately of any error on an invoice. The Company has the right to suspend delivery of Products and/or any work on the contract if payments are not received on time. Payment shall become immediately due for all Products and services already supplied.
- (e) Counter-charges (back charges) must be invoiced in full to the Company by the Customer on company headed paper and satisfy all supplier invoice criteria. Counter-charges may not be deducted from agreed project prices.
- (f) Subject to sub-clause (a) above, payment shall become immediately due for all Products upon notification to the Customer that goods have been tested and/or are ready for despatch.
- (g) (i) In the event of the suspension of the work by the Customer's instructions or lack of instructions, the contract price shall be increased to cover any extra expenses thereby incurred by the Company. In the event of the Customer not accepting delivery of goods ordered with the Company, those goods which were specifically ordered / made for the Customer must be paid for by the Customer.
  - (ii) Duties or Taxes on manufactured goods wherever imposed are not included unless expressly stipulated in the Company's quotation or order confirmation, but if included, are always based upon the tariffs in force on the date of the quotation or order confirmation and the Company reserves the right to adjust all prices by a sum corresponding to the amount of the difference in any tariff, duty or tax on the date of the tender or order confirmation and the date when such tariff duty or tax is actually paid.

- (iii) Goods of foreign origin are included in the Company's tender at prices based upon the appropriate rate of foreign exchange current at the time of quoting and any variation in such rate is for the Customer's account. Payment of such goods must be made in the currency of the country of origin of the goods, if required by the Company.
- (h) Payments to the Company shall not be delayed for eventual lack of payment to the Customer from any other party.
- (i) Retentions on payments are not permitted.

## 16. Credit Restrictions

Notwithstanding anything to the contrary agreed by the Company, the Company reserves the right at any time and from time to time to review any credit extended to any Customer. In the event that any order received from any Customer is likely to exceed the credit limits as may be decided upon by the Company, the Company shall have the right at its option to refuse to supply the Products requested or to supply only such portion thereof to keep the Customer below the credit limit.

## 17. Delivery Time

- 17.1 (a) the times for delivery given by the Company refer to the completion of manufacture in the works and are not binding unless otherwise agreed upon. The time for delivery is reckoned from the day on which complete agreement on the subject of the order is reached between the Customer and the Company in writing and upon receipt of the first payment, if it has been agreed that such becomes due when the order is placed.
- (b) The time for delivery will be correspondingly extended (account also being taken of conditions in the workshops when the work is taken up again):
1. If payments are not made punctually.
  2. If the data required for the execution of the work is not supplied in good time or is subsequently modified.

In the event of an act of God, governmental direction, other authoritative direction or intervention, strikes, lock-outs or other industrial civil or international unrest (whether the same affects the Company, its suppliers, subcontractors or agents) or any other cause of whatsoever nature beyond the control of the Company or force majeure, the Company shall not be liable for any delay in delivery, the non-production, non-delivery, destruction, or deterioration of all or any part of the Products or from any other default in the performance of the contract arising therefrom and the Company shall have the option either to cancel the contract either wholly or partially or to extend the time of delivery during



the period as such circumstances or any of them shall continue. In the event of any such cancellation by the Company or any such postponement, the Customer shall have no claim whatsoever against the Company.

- (c) Late delivery does not give the Customer the right to withdraw from the contract, nor entitle the Customer to damages for losses due directly or indirectly to late delivery.
- (d) A penalty for late delivery can only be enforced when it has been expressly agreed upon in writing and when it can be proved that the Company was responsible for late delivery and that the Customer has suffered loss through the delay. This penalty will be considered as the maximum amount of compensation which the Customer can claim from the Company for late delivery. It cannot be imposed:-
1. If the Customer has not paid in time.
  2. If the Company temporarily substitute other material for that ordered:-
  3. If the site is not ready to receive the material, or if the Customer is behind with the completion of the arrangements to be undertaken by him so that delivery of the material would have to be postponed or erection delayed in any case, or setting to work would not take place directly after erection.

## 18. Import and Export Licences

18.1 (a) If the Customer fails to obtain any necessary import licence or quota allocation in time, the Company shall have the right either to postpone delivery or to cancel this contract wholly or partially without being under any liability whatsoever to the Customer. The Customer shall be liable for any losses or expenses that are incurred by the Company as a result of such failure.

(b) The Customer shall in respect of each consignment obtain at his own risk and expense any export license or permit of the like which may be required for the exportation and acceptance of any consignment of Products into the country of destination and bear and pay all costs and charges which may be incurred on obtaining any certificate of origin or consular invoice and any documents other than those previously referred to in this Clause which the Customer may require for exportation and acceptance of such consignment into the country of destination and where necessary for its passage through any other country.

## 19. Right to Use Product before Payment

A. Prior to the payment in full of the price of the Products and all sums due by the Customer to the Company the Customer shall be entitled to use the

Products (which remain the property of the Company in the manner hereinafter appearing) in the manner set out in this Clause:

- (i) The Customer may:-
- (a) Offer the Products for sale;
  - (b) Incorporate the same in any process of manufacture either in a worked or unworked state: or
  - (c) May use the same for his own private use
- (ii) The Customer may not offer the Product as security for the performance of any obligations of the Customer to any third party.

B. At any time prior to the Customer paying all sums due the Company may by notice in writing delivered to the Customer's last known residence or place of business determine the Customer's right to use the said Products in the manner detailed above or at all whereupon the Customer shall forthwith return the Products to the Company and/or the Company may enter the Customer's premises for the purposes of recovering the said Products.

C. The happening of any of the events set out below shall forthwith (without notice) terminate the Customer's right to use the Products:-

- (i) Any notice to the Customer that a receiver or manager is or has been appointed over part or all of its assets or undertaking;
- (ii) Any notice to the Customer that a petition to wind up the Customer is to be or has been presented or any notice of a resolution to wind up the Customer (save for purposes of ad followed by a bona fide reconstruction or amalgamation)
- (iii) A decision by the Customer that the Customer intends to make arrangement with its creditors, and
- (iv) The insolvency of the Customer within the meaning of Section 63(3) of the Sale of Goods Act 1893.

## 20. Reservation of Ownership of Products

A. Prior to the payment of the price of the Products and all sums due by the Customer to the Company the products shall remain the Company's property and the Customer may not use the Products save as provided in Clause 19.

B. If the Products are used or incorporated in the production of new Products by the Customer, before payment the Customer shall hold such new Products or such portion of the same as consists of or is attribute to the Products sold by the Company for and to the use of the Company.

C. In the event of a re-sale of the Products before payment, the Customer agrees to assign and assigns to the Company at the conclusion of the contract of re-sale and effective up to the date of payment any claims against the customer's customers which may have arisen (or arise in the future) from the re-sale and undertakes to notify the Company on request of the names of the third party

debtors and the amounts due by such persons to the Customer.

D. In the event of the Customer re-selling the Products prior to payment, the Customer shall hold all monies received from such re-sale or sales for or unto the use of the Company and undertakes to maintain an independent account of all sums so received and on request to provide details of such sums and account.

E. On the re-sale of unpaid for Products the Customer will inform the third party of the Company's interest in the goods and the Company's interest in the sale price thereof.

## **21. Guarantee**

1. The Company guarantees the proper working of Products for a period of twelve months (in day and night service the guarantee will be reduced to six months even if such service is only intermittent). Reckoned from the date on which the Products are ready for dispatch from the Company's works, and the Company undertakes on written request to repair or replace at the Company's discretion and as soon as possible parts which may have become damaged or unfit for use owing to faulty material, design or workmanship provided always that any loss, injury, damage, defect or claim of any kind whatsoever arising out of or in connection with the use of the Products is not occasioned by negligence, including but not limited to failure on the part of the Customers or of any person for whom the Customer may be responsible to follow fully proper operational procedures and instructions, directly or indirectly, or by the use of any goods or materials other than the Products.

2. The Company undertakes no liability to the Customer for the observance of the terms of a guarantee from the Company's Supplier.

3. The Customer shall bear the cost of freight of the faulty material from the plant to the works of manufacture and back. If the size of the machine or apparatus does not allow of its being returned, the Company shall supply free of charge (but excluding carriage) the replacement material required to carry out the maintenance work and bear the costs of the Company's personnel on site, on condition that the machine or apparatus be placed at the Company's disposal for a reasonable period. The Company is not responsible for dismantling equipment not supplied by the Company..

4. The Company expressly declines to accept responsibility for any other damage whatsoever. The Company guarantee is subject to the obligations entered into by the Customer under the contract and in particular to the agreed terms of payment being fulfilled.

5. The Customer has no right to withdrawal from the contract or cancel the order.

6. When carrying out of maintenance work on site by the Company's, parts which have been replaced do not become the Company's property.

7. Adjustments work and the subsequent supply of component parts during the maintenance Period or within the scope of the Company's guarantee, but which have

been postponed at the request of the Customer; do not modify the terms of guarantee and of payment.

8. The Company's guarantee automatically expires if the Customer does not place the contract material at the Company's disposal for a reasonable time to allow for correcting recognised faults within the maintenance period, or if the Customer either himself or through a third party, carries out alterations or repairs without the Company's written consent or does not immediately take appropriate steps to prevent any damage from becoming more serious and to enable the Company to rectify the defect.

9. The Company's guarantee does not cover damage resulting from normal wear and tear, faulty handling by Customer, improper storage by Customer, improper maintenance, failure to observe the operating instructions, incorrect operation, excessive loading, the use of unsuitable material, the influence of chemical or electrolytic action, water which is contaminated, contains sand or is liable to form deposits, from corrosion, erosion, cavitation and such like, unsatisfactory foundation. Building, erection, commissioning or any other repair work not undertaken by the Company or without the Company's prior authorisation, or any other reasons beyond the Company's control shall not be covered by guarantee.

10. When supplying material not of the Company's manufacture, the Company's obligations with regard to guarantee and penalties will be the same as those of the Company's Suppliers to the Company.

11. If on expiry of a guarantee period, the Customer has made no specific written claims under the terms of guarantee, the Company is released from the guarantee obligations.

12. Guarantee is not valid if all payments, including interest billed, are not received from the Customer.

## **22. Exclusions of Consequential Loss**

The Company shall not be liable for failure to deliver or for delay in delivering Products by any particular date or for any consequential loss or damage including but not limited to lost business or profits, loss of use of products, costs of capital or costs connected with interruption of operation, whether or not such damages are foreseeable, whether or not the Company has been advised of the possibility of such damages and whether or not such damages are based on breach of warranty, contract, tort or any other cause of action sustained by the Customer or his Customer as a result of such failure. Neither the Company nor its servants or agents shall be liable for loss, injury or claim of any kind whatsoever arising out of or in connection with the use by any person of Products supplied by the Company whether or not such Products were manufactured by the Company and whether or not such loss, injury, damage or claim be occasioned by the negligence of the Company or of any person for whom the Company may be responsible.

## **23. Complaints**

Notwithstanding the provisions in this contract regarding delivery of and payment for the Products sold hereunder if the Customer makes any claim against the Company that the Products are not in accordance with the specification agreed, that there is a shortage in delivery or that the Products delivered are faulty or defective, the Company may suspend all further deliveries of Products pending the determination of the said dispute or alternatively the Company at its option may insist that all further deliveries are paid in full prior to dispatch from the Company's premises. In the event of suspensions of delivery being lifted any applicable delivery date or dates shall be delayed accordingly. In the event of suspension of delivery or alternatively the Company insisting on payment in full prior to delivery no liability shall attach to the Company by reason of any delay thereby caused.

## **24. Erection**

24.1 The place of fulfilment of contract is the works of manufacturer. If a contract includes erections, the site of erection is the place of fulfilment only as concerns the Company's engagements relative to erection.

## **25. Applicable Law**

This contract shall be governed by and constructed in all respects (including the formation thereof and the performance thereunder) in accordance with the laws of the Republic of Ireland.

## **26. Arbitration**

If at any time any question, dispute or difference whatsoever shall arise between the Company and the Customer in relation to or in connection with the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration in Ireland of a person to be mutually agreed upon or failing agreement, within fourteen days of receipt of such notice of some person appointed by the President for the time being of the Institute of Engineers of Ireland. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1954-1980 or any re-enactment or modification thereof.