



FLETTNER VENTILATOR LIMITED

Terms and Conditions of Trade

1. Interpretation

1.1 In these Conditions the following words have the following meanings:

- "Buyer" the person(s), firm or company buying the Goods and where there are two or more parties who are the Buyer, these Conditions shall be deemed to be binding upon such parties jointly and separately;
- "Contract" any contract between Flettner and the Buyer for the sale and purchase of the Goods, incorporating these Conditions;
- "Goods" any goods agreed in the Contract to be supplied to the Buyer by Flettner.

2. Application of terms

- 2.1 All quotations are made and all orders for Goods are accepted subject to the following terms and conditions which shall form part of and govern the Contract between Flettner Ventilator Limited ("Flettner") and the Buyer.
- 2.2 Subjected to any variation under condition 2.3, the Contract will be on these Conditions to the exclusion of all other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
- 2.3 These Conditions apply to all Flettner's sales and any variation to these Conditions and representations about the Goods shall have no effect unless expressly agreed in writing and signed by an authorized officer of Flettner.
- 2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.5 Each order for Goods by the Buyer from Flettner shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.6 No order placed by the Buyer shall be deemed to have been accepted by Flettner until the earlier of (i) a written confirmation of order or an invoice is issued by Flettner or (ii) Flettner delivers the Goods to the Buyer.
- 2.7 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.8 Any quotation is given on the basis that no contract will come into existence until Flettner despatches a confirmation of order to the Buyer. Any quotation is valid for a period of 60 days from its date unless otherwise stated in it, provided that Flettner has not previously withdrawn it.
- 2.9 The description of the Goods shall be as set out in the Flettner's quotation.
- 2.10 All drawings, descriptive matter, specifications and advertising issued by Flettner and any descriptions, representations or illustrations contained in Flettner's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

3. Price

- 3.1 Unless otherwise agreed by Flettner, the price for the Goods shall be governed by the Flettner price list effect on the date of delivery or deemed delivery.
- 3.2 Unless otherwise agreed by Flettner in writing, the price for the Goods: (i) in the case of Goods for delivery in the UK shall be exclusive of insurance, carriage and Value Added Tax, all of which amounts the Buyer will pay in addition when it is due to pay for the Goods, and (ii) in case of Goods for delivery outside the UK ("Export Contracts") on the basis of FOB (as the term is defined in the ICC Incoterms 1990 edition). For UK deliveries, carriage will be charged at Flettner's standard charges in effect at the time the order is accepted by Flettner.

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- 3.3 Flettner shall have the right to adjust any specifically quoted prices to take account of any increase in the price of materials, labour or costs of any kind arising for any reason after the date of the Contract.
- 3.4 Price changes shall take effect on the date of publication of the change.

4. Payment

- 4.1 All payments for the Goods and other charges or costs payable by the Buyer shall be made in Sterling and shall be due in accordance with the Contract. The Buyer shall make all payments due under the
- 4.2 Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Flettner to the Buyer.
- 4.3 Time for payment shall be of the essence.
- 4.4 If the Buyer fails to make payment on the due date then without prejudice to any of Flettner's other rights Flettner may:
- (a) suspend or cancel deliveries of any Goods due to the Buyer;
 - (b) appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other Contract with the Buyer) as Flettner may in its sole discretion think fit, and
 - (c) charge interests on any overdue amount from the due date for payment at the rate of 2% above the base lending rate from time to time of the Royal Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment, and the Buyer will reimburse to Flettner all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- Flettner reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5. Delivery

- 5.1 Unless otherwise expressly agreed by Flettner in writing and save in the case of Export Contract, goods shall be regarded as delivered to the Buyer when delivered to the premises of the Buyer or to such other address nominated by the Buyer. In the case of Export Contracts, Goods shall be regarded as delivered in accordance with the applicable export terms of the Contract.
- 5.2 Time for delivery of the Goods shall not be of the essence and unless otherwise expressly agreed in writing by Flettner, any date or time for delivery named by Flettner shall be an estimate only.
- 5.3 Flettner shall select the means and manner of transportation at its discretion unless the Buyer has specified any particular means.
- 5.4 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer fails: (i) to take delivery of the Goods or any part of them on the due date and (ii) to provide any instructions or documents required to enable the Goods to be delivered on the due date, Flettner may on giving written notice to the Buyer store or arrange for the storage of the Goods and on the service of the notice:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Flettner's negligence);
 - (b) the Goods will be deemed to have been delivered; and
 - (c) the Buyer shall be liable for all related costs and expenses including storage and any redelivery and insurance charges arising from the Buyer's failure.

6. Non-Delivery

- 6.1 Subject to any other provisions of these Conditions, Flettner will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Flettner's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

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- 6.2 Subject to condition 6.1, Flettner shall not be liable for any non-delivery of Goods unless written notice is given to Flettner within 7 days of the date when the Goods would in the ordinary course of events have been received. In all cases, Flettner's liability for non-delivery shall be subject to the limitation of liability provided for in condition 6.4.
- 6.3 The quantity of any consignment of Goods as recorded by Flettner upon despatch from Flettner's place of business or other despatch point shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.4 Any liability of Flettner for non-delivery of the Goods under condition 6.2 shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. Acceptance

The Buyer shall for all purposes be deemed to have accepted the Goods unless it shall notify Flettner in writing that the Goods are not accepted within the applicable periods and in accordance with the procedures specified in condition 9.

8. Title and Risk

- 8.1 The Goods are at the Buyer's risk as from the time of delivery.
- 8.2 Ownership of the Goods shall remain with Flettner and shall not pass to the Buyer until Flettner has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to Flettner from the Buyer on any account.
- 8.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall hold the Goods as bailee for Flettner and shall maintain them in satisfactory condition and properly insured, and marked and stored separately from all other Goods of the Buyer or any third party in such a way that they can at all times be readily identified as Flettner's property.
- 8.4 Notwithstanding that the Goods remain the property of Flettner, the Buyer may resale or use the Goods in the ordinary course of the Buyer's business but shall account to Flettner for the proceeds of sale or otherwise of the Goods, whether tangible or intangible including insurance proceeds.
- 8.5 Until such time as ownership of the Goods passes to the Buyer, (and provided the Goods are still in existence and have not been resold) Flettner shall be entitled at any time on request to require the Buyer to deliver up the Goods to Flettner and, if the Buyer fails to do so immediately, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. Flettner's right to repossess the Goods shall apply also under the circumstances provided in condition 14.
- 8.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of Goods which are the property of Flettner, but if the Buyer does so all moneys owing by the Buyer to Flettner shall (without prejudice to any other right or remedy of Flettner) immediately become due and payable.
- 8.7 Flettner shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passes to the Buyer.

9. Claims Notification

- 9.1 Any claim by the Buyer that any Goods have been delivered damaged shall be notified by the Buyer to Flettner and to the carrier within 3 days of the receipt of the Goods by the Buyer.
- 9.2 Any alleged defect shall be notified by the Buyer to Flettner within 30 days of the receipt of the Goods by the Buyer or in the case of any defect which is not reasonably apparent on a visual inspection and where such defect appears under proper use within 12 months from the date of receipt within 7 days of the defect coming to the Buyer's attention.
- 9.3 Any claim by the Buyer that the Goods are defective must be in writing and will be conditional upon the Buyer returning to Flettner a completed copy of Flettner's standard complaints documentation together with the allegedly defective Goods (securely packed and carriage paid) for examination within 30 days of the Buyer's notification.

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9.4 Flettner shall have no liability with regard to any claim in respect of which the Buyer has not complied with the claims procedures in these Conditions.

10. Warranty

- 10.1 Subject as hereinafter provided Flettner will (entirely at its option) replace or refund the purchase price at its own cost all Goods ascertained and agreed by Flettner to be defective provided that:
- (a) the defects result from the use of defective materials or by reason of defective workmanship and not in any way from accident, misuse, neglect or mishandling by the Buyer or any third party; and
 - (b) notification of any such defect is received by Flettner within the applicable time limits and in accordance with the claims notification procedures specified in condition 9.
- 10.2 Flettner will not be liable for any Goods which have been adjusted, modified, or repaired except by Flettner or strictly in accordance with Flettner's instructions or for any failure by the Buyer or any third party to follow Flettner's instructions for installation and/or recommendations for use and/or maintenance of the Goods (including where components have been substituted).
- 10.3 Unless expressly agreed in writing by Flettner as part of the Contract, no condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or for the use under specific conditions notwithstanding that such purpose or condition may be known or made known to Flettner.

11. Limitation of Liability

- 11.1 Subject to condition 10, the following provisions set out the entire financial liability of Flettner (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these Conditions
 - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 Flettner shall have no liability to the Buyer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of Flettner or in any other way out of or in connection with the supply of the Goods or performance of or failure to perform the Contract except (i) for death or personal injury resulting from Flettner's negligence; and (ii) for Flettner's fraudulent misrepresentation, and (iii) as expressly provided for in these Conditions.

THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 11.3, 11.4 AND 11.5.

- 11.3 Subject to condition 11.2, Flettner's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total amount paid to Flettner by the Buyer.
- 11.4 Flettner shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other clients for consequential compensation (howsoever caused) which arise out of or in connection with the Contract.
- 11.5 All warranties conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from Contract.
- 11.6 Nothing herein shall affect the statutory rights of a Buyer dealing with Flettner as a consumer.

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12. Late Charges Cancellation

The Buyer will be liable for the payment of cancellation charges of 25% of the purchase price of any order for cancellation less than 60 days prior to the estimated delivery date or the commencement of the delivery period as the case may be. Any delivery delay of more than 30 days requested by the Buyer will be deemed a cancellation unless agreed to in writing by a duly authorized officer of Flettner.

13. Intellectual Property

13.1 The specification and design of the Goods (including all intellectual property rights in and relating thereto) are the sole property of Flettner. No rights or licence is granted under these Conditions or Contract to the Buyer under any patent, trademark copyrights, registered design or other intellectual property rights except the right to use or resell the Goods.

13.2 All Goods sold may be resold by the Buyer only in the packaging supplied by the Seller and in no case may any trade mark other than those applied by the Seller be marked on or applied in relation to the Goods.

14. Insolvency of Buyer

14.1 This Conditions applies if:

- (a) The Buyer make any voluntary agreement or composition with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than the purposes of amalgamation or reconstruction); or
- (b) the Buyer suffers or allows any execution whether legal or equitable to be levied on its property or obtained against it or fails to observe/perform any of its obligations under the Contract or any other contract between Flettner and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
- (c) the Buyer ceases or threatens to cease, to carry on business; or
- (d) an encumbrancer taking possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (e) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Buyer.

14.2 If this Condition applies then, without prejudice to any other right or remedy available to Flettner, Flettner shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Buyer's right to possession on the Goods shall terminate immediately and Flettner shall have the right to repossess the

14.3 Goods under condition 8.5, or the price shall become immediately due and payable at Flettner's sole option, notwithstanding any previous agreement or arrangement to the contrary.

15. Force Majeure

Flettner shall not be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond its reasonable control.

16. Notices

Any notice necessary to be served hereunder shall be properly served if served on Flettner at Kingsbury House Business Centre, 468 Church Lane, Kingsbury, London NW9 8UA, United Kingdom and if served on the Buyer at the registered office or main trading address if different.

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17. General

- 17.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.
- 17.2 Any waiver by Flettner of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.3 Failure or delay by Flettner in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

18. Governing Law

Unless otherwise agreed by Flettner these conditions shall be subject to and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

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