



## FLETTNER VENTILATOR LIMITED

### Terms and Conditions of Trade

#### 1. INTERPRETATION

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

"Business Day"	a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.
"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.
"Flettner Warranty"	the warranty Flettner provides for all its Goods, a copy of this can be found <a href="http://www.flettner.co.uk/warranty/">www.flettner.co.uk/warranty/</a>
"Goods"	any goods agreed in the Contract to be supplied to the Buyer by Flettner.
"Order"	the Buyer's order for the Goods, as set out in the purchase order form at the end of these Conditions.
"Specification"	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and Flettner.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- 1.5 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 A reference to **writing** or **written** includes email.

#### 2. APPLICATION OF TERMS

- 2.1 All quotation 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 authorised 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 a written confirmation of order or an invoice is issued by Flettner 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 for Goods given by Flettner shall not constitute an offer. Any quotation is valid for a period of [20] Business Days from its date of issue unless otherwise stated in it, provided that Flettner has not previously withdrawn it.



- 2.9 Flettner may reject an Order from the Buyer if Flettner reasonably believes that the Buyer has placed an Order as a Consumer

### 3. GOODS

- 3.1 The description of the Goods shall be as set out in the Flettner's Specification.
- 3.2 Flettner reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and Flettner shall notify the Buyer in any such event.
- 3.3 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 nor have any contractual force.

### 4. PRICE

- 4.1 Unless otherwise agreed by Flettner, the price for the Goods shall be set out in the Order, or, if no price is quoted, the price shall be governed by the Flettner price list effective on the date of delivery or deemed delivery.
- 4.2 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, or (ii) in case of Goods for delivery outside the UK ("Export Contracts"), shall be charged on the basis specified in the Order which could include "Delivered At Place" "Free On Board" or "Free Carrier"(as the term is defined in the ICC Incoterms 2020 edition). For UK deliveries, carriage will be charged at Flettner's standard charges in effect at the time the order is accepted by Flettner.
- 4.3 Flettner may, by giving notice to the Buyer at any time before delivery, 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.
- 4.4 Price changes shall take effect on the date of notification of the change.

### 5. PAYMENT

- 5.1 All payments for the Goods and other charges or costs payable by the Buyer shall be made in the currency specified in the purchase order and shall be due in accordance with the Contract.
- 5.2 Flettner will invoice the Buyer for the Goods before or upon dispatch of the Goods for delivery.
- 5.3 The Buyer shall pay each invoice submitted by Flettner within [30] days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by Flettner.
- 5.4 The Buyer shall make all payments (including bank charges) due under the 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.
- 5.5 Time for payment shall be of the essence of the Contract.
- 5.6 Flettner has a general and particular lien over the Goods for all claims and money owing by the Buyer to Flettner under any contract whatsoever and in any other way whatsoever until payment for the Goods has been received.
- 5.7 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 [8]% above the base lending rate from time to time of the Bank of England, 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.

5.8 Flettner reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 6. DELIVERY

6.1 Flettner shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, all relevant Buyer and Flettner reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

6.2 Flettner shall deliver the Goods to the location set out in the Order or such other location as may be advised by Flettner prior to delivery within [three] Business Days of Flettner notifying the Buyer that the Goods are ready.

6.3 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.

6.4 Flettner shall select the means and manner of transportation at its discretion unless the Buyer has specified any particular means.

6.5 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Buyer fails to take or accept delivery of the Goods within [three] Business Days of Flettner notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a force majeure event (as described in Condition 16) or Flettner's failure to comply with its obligations under the Contract in respect of the Goods:

6.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day after the day on which Flettner notified the Buyer that the Goods were ready; and

6.5.2 Flettner shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).

6.6 If [ten] Business Days after the day on which Flettner notified the Buyer that the Goods were ready for delivery, the Buyer has not taken or accepted actual delivery of them, Flettner may resell, or otherwise dispose of, part or all of the Goods, and after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Goods.

## 7. NON-DELIVERY

7.1 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.

7.2 Subject to condition 7.1, 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.

7.3 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.

7.4 Any liability of Flettner for non-delivery of the Goods under condition 7.2 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.



## 8. ACCEPTANCE

- 8.1 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 10.

## 9. TITLE AND RISK

- 9.1 The risk in the Goods shall pass to the Buyer upon delivery, except in the case of an Export Contract when risk shall pass to the Buyer as specified in the purchase order.
- 9.2 All Goods shall remain the property of Flettner until the full purchase price of the Goods has been paid by the Buyer. Until title 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.
- 9.3 Notwithstanding that the Goods remain the property of Flettner, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Flettner receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- 9.3.1 it does so as principal and not as Flettner's agent; and
- 9.3.2 title to the Goods shall pass from Flettner to the Buyer immediately before the time at which resale by the Buyer occurs.
- 9.4 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 at the expense of the Buyer. Flettner's right to repossess the Goods shall apply also under the circumstances provided in condition 15.
- 9.5 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.

## 10. CLAIMS NOTIFICATION

- 10.1 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.
- 10.2 Any alleged defects of the Goods 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 during the Flettner Warranty period, within 7 days of the defect coming to the Buyer's attention.
- 10.3 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 Customer Returns Form which can be found at [www.flettner.co.uk/warranty/](http://www.flettner.co.uk/warranty/) together with the allegedly defective Goods (securely packed and carriage paid) for examination within 30 days of the Buyer's notification.
- 10.4 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.

## 11. WARRANTY

- 11.1 All Goods are provided with a Flettner Warranty and Flettner will (entirely at its option and cost) replace or refund the purchase price of all Goods ascertained and agreed by Flettner to be defective provided that:
- 11.1.1 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



- 11.1.2 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 10.
- 11.2 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).
- 11.3 Unless expressly agreed in writing by Flettner as part of the Contract or detailed in the Flettner Warranty, 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.

## 12. LIMITATION OF LIABILITY

- 12.1 Subject to condition 11, 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:
- 12.1.1 any breach of these Conditions
- 12.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 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 12.3, 12.4 AND 12.5.**

- 12.3 Subject to condition 12.2, 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.
- 12.4 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 claims for consequential compensation (howsoever caused) which arise out of or in connection with the Contract.
- 12.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from Contract.

## 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 trademark other than those applied by the Seller be marked on or applied in relation to the Goods.
- 13.3 The Buyers shall not translate, adapt, vary, modify, disassemble, decompile or reverse engineer the Goods in any way.
- 13.4 The Buyer agrees that it shall only use Flettner's name, trademarks and other intellectual property only as authorised or directed by Flettner and shall not, without the prior written consent of Flettner:
- 13.4.1 alter or make any addition to the labelling or packaging of the Goods displaying the Flettner's trademarks;
- 13.4.2 make any addition or modifications to the Goods; or
- 13.4.3 alter, deface or remove any reference to the trademarks, any reference to Flettner or any other name attached or affixed to the Goods or their packaging or labelling.



## 14. TERMINATION

- 14.1 This Condition applies if:
- 14.1.1 The Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so; or
  - 14.1.2 The Buyer makes 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
  - 14.1.3 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
  - 14.1.4 the Buyer ceases or threatens to cease, to carry on business; or
  - 14.1.5 an encumbrancer taking possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - 14.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the Buyer.
- 14.2 If 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 Goods under condition 9.5, or the price shall become immediately due and payable at Flettner's sole option, notwithstanding any previous agreement or arrangement to the contrary.
- 14.3 Without limiting its other rights or remedies, Flettner may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 14.4 On termination of the Contract for any reason the Buyer shall immediately pay to Flettner all of Flettner's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Flettner shall submit an invoice, which shall be payable by the Buyer immediately on receipt.

## 15. CANCELLATION

**THE BUYER MAY WITHIN [TWO] BUSINESS DAYS OF PLACING AN ORDER AMEND OR CANCEL AN ORDER BY WRITTEN NOTICE TO FLETTNER. IF THE BUYER AMENDS OR CANCELS AN ORDER, ITS LIABILITY TO THE FLETTNER SHALL BE LIMITED TO PAYMENT TO FLETTNER OF ALL COSTS REASONABLY INCURRED BY FLETTNER FULFILLING THE ORDER UP UNTIL THE DATE OF DEEMED RECEIPT OF THE AMENDMENT OR CANCELLATION, EXCEPT THAT THE CUSTOMER SHALL HAVE NO LIABILITY TO THE SUPPLIER WHERE THE AMENDMENT OR CANCELLATION RESULTS FROM THE SUPPLIER'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS CONTRACT.**

## 16. FORCE MAJEURE

Neither party shall not be liable for any delay in performing, or failure to perform, any of its obligations under the Contract due to any act of God, epidemic, pandemic, war, strike, lockout, industrial action, fire, flood, drought, tempest or other event beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing its obligations. If the period of delay or non-performance continues for [12 weeks], the party not affected may terminate the Contract by giving [14 days'] written notice to the affected party.



## 17. NOTICES

- 17.1 Any notice necessary to be served hereunder shall be properly served if served on Flettner at Studio 118 Milton Keynes Business Centre, Foxhunter Drive, Linford Wood, Milton Keynes, MK14 6GD, United Kingdom and if served on the Buyer at the registered office or main trading address if different.

## 18. GENERAL

- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.5 Flettner may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.6 The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Flettner.
- 18.7 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## 19. 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.