



## **TERMS OF SALES AND DELIVERY FOR EFLOW CUSTOMFAN SL**

The following Terms of Sales & Delivery ("General Terms"), see up to date version at <http://customfan.net/en/terms-and-conditions/>, shall apply to all sales of products ("Product") by EFLOW CUSTOMFAN SL ("CUSTOMFAN") to any person ("Purchaser") to which CUSTOMFAN has agreed to supply Products and whose details are set out in a written quotation issued by CUSTOMFAN in relation to Products ("Quote"). These General Terms and the terms contained in the Quote, together constitute the entire agreement between the parties (the "Contract"). To avoid uncertainty regarding any conflict between the General Terms and the Quote (including any special terms included in the Quote), the Quote will take precedence.

### **1. QUOTE, ORDERING PROCESS AND SUITABILITY OF GOODS**

- (1) Completion of a quotation request, which is the Purchaser's enquiry of Products ("RFQ"), shall be treated as an offer by the Purchaser to contract with CUSTOMFAN, but the completion of a RFQ shall not be binding on CUSTOMFAN until: (i) information submitted to CUSTOMFAN by the Purchaser or its nominated party to reflect the Purchaser's technical requirements to Products ("Technical requirements") has been completed by the Purchaser and such Technical requirements has been accepted by CUSTOMFAN; and (ii) a Quote has been issued by CUSTOMFAN to the Purchaser. CUSTOMFAN may, at its sole discretion, accept amendments to an RFQ at any time after acceptance.
- (2) The price of the Product(s) is the price stated in the Quote ("Price").
- (3) The Products chosen, have been selected by the Purchaser with CUSTOMFAN's selection software, which enables comparison of Products and provides information including, but not limited to performance data, noise data, operational limits, motor characteristics and drawings ("Optimiser"), or by CUSTOMFAN on the basis of the information supplied by the Purchaser. The use of and reference to, drawings, data sheets, specifications, calculations, samples or other information provided to CUSTOMFAN by the Purchaser or any nominated third party, shall not relieve the Purchaser of its liabilities with regard to ensuring the accuracy, integrity, suitability and general fitness for purpose of this information and its subsequent use.
- (4) The Purchaser shall ensure the selected Products and design are fit for purpose and meet all regulatory, legislative and specified requirements for the proposed application. The Purchaser shall be deemed to have satisfied itself as to the suitability of the design, performance characteristics and materials

to meet local conditions, building requirements or any other factors which may in any way affect the operation of the Products supplied.

- (5) CUSTOMFAN accepts no responsibility for the accuracy of any information submitted by the Purchaser or any nominated third party.

## **2. TECHNICAL DATA AND PRODUCT INFORMATION**

- (1) All information stated in brochures, the price list, technical reports, samples, drawings, descriptive matter, specifications and advertising, including in respect of weight, dimensions, capacity, performance, and other technical data shall be for guidance only, and binding only to the extent that the Quote explicitly refers to them.
- (2) The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of CUSTOMFAN which is not set out in the Contract.

## **3. CONSTRUCTIONAL CHANGES**

- (1) CUSTOMFAN reserves the right, before delivery and with 6 months prior notice to the Purchaser, to undertake any constructional changes in the specifications including in design or execution as it may, at its sole discretion, deem necessary, provided that the alteration does not materially affect the quality or adversely affect the performance of the Product.
- (2) Such changes shall entitle the Purchaser to cancel the Contract only: (i) in respect of Products which have been altered; and (ii) where the alteration materially affects the quality or adversely affects the performance of the Product.

## **4. PRICE**

- (1) All Prices stated in the Quote are exclusive of GST, VAT or equivalent goods and services taxes or government duties, and exclusive of all costs and charges in relation to packaging, loading, unloading, carriage and insurance, where nothing to the contrary has been specified in the Quote.
- (2) CUSTOMFAN reserves the right to adjust accepted Prices in the case of considerable exchange rate fluctuations, increases in costs of material, government intervention, customs duties, direct and indirect taxes and other cost-increasing factors beyond CUSTOMFAN's control.
- (3) The Purchaser shall pay CUSTOMFAN the Price in accordance with the method of payment shown on the Quote, and within the deadline for payment stated on the Quote, notwithstanding that delivery may not have taken place.

## **5. TRANSFER OF RISK AND DELIVERY**

- (1) CUSTOMFAN shall arrange delivery of the Products in accordance with the terms specified in the Quote and the provisions of these General Terms. The risk on Products shall pass to the Purchaser on delivery according to INCOTERM in force for the particular sales.
- (2) Where the time and date of delivery of any Product is provided for in the Quote, such time and date is given in good faith and according to CUSTOMFAN's best estimate only. Time of delivery is not of the essence of Contract unless this has been specifically stated in the Quote. If CUSTOMFAN concludes that the agreed time of delivery cannot be kept, or that a delay is likely to occur, the Purchaser will be so notified in writing accompanied, where practicable, by the time when delivery is expected to occur.
- (3) Unless otherwise stated in the Quote, the Product is deemed to have been sold Ex Works (EXW) according to the INCOTERMS applying on the date of the Quote. CUSTOMFAN will give the Purchaser appropriate notice to allow it to collect the Product when it is ready for collection.
- (4) If, for any reason the Purchaser fails to accept delivery of the Product, the Purchaser will remain liable to pay the price for the Product together with interest thereon at the rate specified in the Quote and (without prejudice to any other remedy available to it) CUSTOMFAN will in its sole discretion be entitled to:
  - (a) store the Product, in which case the Purchaser will be liable to CUSTOMFAN for the reasonable cost of such storage, and the Purchaser will be responsible for all loss or damage to the Product howsoever arising (including loss or damage caused by the negligence of CUSTOMFAN); or
  - (b) terminate the Contract.
- (5) The Purchaser will reimburse CUSTOMFAN for any duty or excise which CUSTOMFAN must pay because the Purchaser has not returned any relevant customs documentation or has otherwise not dealt with any customs procedures correctly and on time in any country.

## **6. PAYMENT**

- (1) If the Purchaser fails to make the payment in accordance with the payment terms stated in the Quote, CUSTOMFAN shall have, without prejudice to any other rights or remedies CUSTOMFAN might have, the right to charge late interest from the due date until the payment is made, at a rate of 2% per month of the unpaid amount. Interest shall be payable at this rate both before and after any judgment is made against the Purchaser until the date on which payment in cleared funds is received in full, including all accrued interest.
- (2) The Purchaser shall make all payments due under the Contract without any deduction by way of set-off, counterclaim, discount or otherwise unless such

rights relied on cannot be excluded by the law of the jurisdiction in which the Purchaser is resident.

## **7. WARRANTY, INSPECTION**

- (1) CUSTOMFAN provides warranties as to material and workmanship for the Product sold by CUSTOMFAN to the Purchaser pursuant to the Contract. Such warranties are given for a period of twelve (12) consecutive months after delivery ("Warranty"). All other warranties, conditions, statements or undertakings (whether express or implied) as to quality, condition, description, compliance with sample, or Products fitness for purpose or suitability for any purpose (however or whenever statutory, custom of the trade or otherwise), other than those expressly set out in the Contract are expressly excluded to the fullest extent permitted by applicable law.
- (2) The signing of a delivery note is deemed to be acceptance of the Product(s) with regard to the arrival and number of items delivered. The Purchaser shall, within two (2) days of the arrival of each delivery of a Product and in any event prior to the use of the Product(s), give written notice of rejection to CUSTOMFAN on account of any defect which is apparent on reasonable inspection, and by reason of which it believes that the Product does not comply with the Warranty. In the absence of any such notice within two (2) days of the arrival of the delivery and in any event prior to the use of the Product(s), the Product(s) shall conclusively be presumed to comply with the Warranty and, accordingly, the Purchaser shall be deemed to have accepted the delivery of the Product(s) in question and CUSTOMFAN shall have no liability to the Purchaser with respect to that delivery (except in relation to liability for any latent defects).
- (3) If the Purchaser alleges that any Product is defective, the Purchaser shall as soon as possible, if so requested by CUSTOMFAN and at the Purchaser's own expense, return the Product (unaltered) to CUSTOMFAN for inspection or to give CUSTOMFAN a reasonable opportunity to inspect or test the Product(s).
- (4) If the Purchaser rejects any delivery of a Product which does not comply with the Warranty, CUSTOMFAN shall, as soon as practicable after having accepted that the Product does not comply with the Warranty:
  - (a) repair or supply a replacement Product which complies with the Warranty, in which event: (i) any repaired or replacement Product shall be subject to the same 12-month Warranty period with effect from the date of delivery, and (ii) CUSTOMFAN shall be deemed not to be in breach of the Contract or have any liability to the Purchaser for the rejected Product;
  - or
  - (b) notify the Purchaser that it is unable to supply a replacement Product, in which case CUSTOMFAN may grant, at its own volition, the Purchaser a credit equal to the value of the Product(s) and/or a cash

refund for the value of the Product(s) that CUSTOMFAN agrees do not comply with the Warranty.

- (5) The repair or replacement obligation referred to in Clause 7(4) above shall not apply where, in CUSTOMFAN's reasonable opinion:
- (a) the Product was not installed or used in accordance with the requirements or conditions specified in the Technical Requirements and/or Operating Instructions;
  - (b) the defects were attributable to normal wear and tear;
  - (c) the defects were attributable to the negligence of the Purchaser, its agents or employees;
  - (d) modifications or technical intervention were carried out without CUSTOMFAN's consent in writing;
  - (e) the Purchaser made further use of the Products after giving written notice of the defect in accordance with Clause 7(2);

## **8. LIMITATION OF LIABILITY AND INDEMNIFICATION**

- (1) CUSTOMFAN's total cumulative liability in contract, tort (including negligence), product liability (other than product liability based on the EC directive on product liability), misrepresentation or otherwise (except Warranty liability to repair or replace according to Clause 7 (4)) in relation to the Contract shall be limited to the higher of a) two times the Price of the Product to which the Purchaser's claim relates within a year, or b) EUR 50,000. Notwithstanding the aforementioned, CUSTOMFAN's liability can never exceed EUR 500,000.
- (2) CUSTOMFAN shall not be liable to the Purchaser for:
- (a) any indirect, special or consequential loss or damage;
  - or
  - (b) loss of data or other equipment or property; or
  - (c) economic loss or damage;
  - or
  - (d) incurring of liability for loss or damage of any nature whatsoever suffered by third parties (including in each case incidental and punitive damages);
  - or
  - (e) any loss of actual or anticipated profit, interest, revenue, anticipated savings or business or damage to goodwill, even if CUSTOMFAN is advised in advance of the possibility of any such losses or damages.

- (3) Without prejudice to the condition mentioned in clause 7 (1), no statement or undertaking contained in any national standard, national addition of a European standard, ISO standard, or other standard or technical specification as to the suitability of the Products for any purpose shall give rise to any legal liability of CUSTOMFAN, except to the extent such exclusion is prevented by law.
- (4) The Purchaser shall indemnify and keep indemnified CUSTOMFAN (and its employees and agents) fully from and against any and all actions, claims, costs, losses, damages, demands, expenses, proceedings, charges and other liabilities arising, suffered or incurred in respect of:
- (a) any error in or omission from any information supplied by the Purchaser (or its nominated third party);
  - (b) any threats, claims or allegations that any information supplied by the Purchaser (or its nominated third party) or the use thereof, infringes any intellectual property or other rights of any third party;
  - (c) any threats, claims or allegations that any information supplied by the Purchaser (or its nominated third party) or the use thereof, breaches the provisions of any statute, statutory instrument or regulation or other law of any applicable country or territory; and
  - (d) the use of reliance by CUSTOMFAN upon any information supplied by the Purchaser (or its nominated third party) including, without limit, any claim made against CUSTOMFAN by any third party as a result thereof.
  - (e) any third-party claim made against CUSTOMFAN related to Products sold by the Purchaser to a third party, whether such Products have been (re)sold separate or together with one of Purchaser's products. Notwithstanding the aforementioned, the Purchaser shall only indemnify CUSTOMFAN for third party claims based on the EC directive on product liability, if the Purchaser has a) implemented/integrated the Products into the Purchaser's own products, and b) sold such products to the third parties.
- (5) The parties expressly agree that:
- (a) the conditions of the Contract relating to CUSTOMFAN's liability, including but not limited to the ones stipulated in Clauses 8 (1), 8 (2), 8 (3) and 8 (4), apply not only to CUSTOMFAN's liability caused by or related to the Products themselves or the Purchaser's property to which the Products sold are attached, but also to any kind of CUSTOMFAN potential products' liability for damage to the Purchaser's property, which is neither the Products themselves, nor the Purchaser's property to which the Products sold are attached, and/or in all cases if CUSTOMFAN's liability is non contractual;
  - (b) The Purchaser undertakes to include in its any further agreement on Products sales the exclusion from the Contract of third parties rights as stipulated in Clause 18 of the Contract.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- (1) The Purchaser acknowledges that:
  - (a) all copyright, database rights, topography rights, design rights, trademarks, trade names, utility models, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with the Products (together, the "Intellectual Property Rights") are CUSTOMFAN's (or its licensor's) property, notwithstanding if the Intellectual Property Rights in the Products were pre-existing or developed specifically for the Purposes of the Contract;
  - (b) nothing in the Contract shall be construed as conferring any license or granting any rights in favour of the Purchaser in relation to the Intellectual Property Rights. CUSTOMFAN asserts its full rights to control the use of its trademarks within the territories the Products are sold;
  - (c) any reputation in any trademarks affixed or applied to the Products shall accrue to the sole benefit of CUSTOMFAN or any other owner of the trademarks from time to time.
- (2) The Purchaser shall not repackage the Products and/or remove any copyright notices, confidential or proprietary legends or identification from the Products except for any removal which is the necessary result of a manufacturing process of which CUSTOMFAN has been previously notified in writing by the Purchaser.
- (3) The Purchaser shall not use (other than pursuant to the Contract) or seek to register any trademark or trade name (including any company name) which is identical to, confusingly similar to, or incorporates any trademark or trade name which CUSTOMFAN or any associated company of CUSTOMFAN owns or claims rights in anywhere in the world.

## **10. SUPPLY OF OPTIMISER**

- (1) If Optimiser is supplied, the Purchaser is obliged to use Optimiser and all data obtained and/or available through its use of Optimiser in accordance with the terms and conditions stipulated in the license agreement for Optimiser, including but not limited to:
  - (a) The Purchaser is granted the non-exclusive and non-transferable right to use Optimiser;
  - (b) The Purchaser is not entitled to grant any sub-licenses for use of Optimiser;
  - (c) The Purchaser has duty-bound to prevent unauthorized access to Optimiser and the documentation by third parties by taking appropriate precautions; storing the original data on the storage media supplied and the backup copy at a place that is secured against

unauthorized access by third parties; insistently pointing out to its staff the duty to comply with the present terms of supply and with the provisions of copyright law;

- (d) All data and information stored in Optimiser is the property of Multi-Wing and the Purchaser undertakes full non-disclosure obligation regarding that;
- (e) The Purchaser may only use data and disclose information to the persons who need to know it, relating to Products and only within the limits stipulated in the Optimiser license agreement, including but not limited to, not removing or altering references to authors, series numbers, and other features serving as the identification of the software;

## **11. FORCE MAJEURE**

- (1) CUSTOMFAN shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event beyond CUSTOMFAN's reasonable control which by its nature could not have been foreseen or, if it could have been foreseen, was unavoidable, including but not limited to, strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- (2) Both Parties shall be entitled to terminate the Contract immediately by notice in writing if the performance of its obligations becomes impossible for a period of time exceeding 60 days due to any of the circumstances set forth in Clause 11 (1) above.

## **12. SETTLEMENT OF DISPUTES, GOVERNING LAW**

- (1) This Contract and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Denmark. CUSTOMFAN and the Purchaser agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") applies between the parties with such amendments and exceptions set forth in the General Terms. To avoid any uncertainty, the General Terms together with the Quote take precedence over CISG and any applicable optional laws.
- (2) If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("Dispute"), then either party may give the other

written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation. On serving the Dispute Notice, CUSTOMFAN and the Purchaser shall attempt in good faith to resolve the Dispute. If CUSTOMFAN and the Purchaser are for any reason unable to resolve the Dispute within 30 days of the Dispute Notice being served, either party may refer such dispute for arbitration in accordance with Clause 12(3).

- (3) Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall, subject to Clause 12(2), be referred to and finally resolved by arbitration in Denmark in accordance with the Arbitration Rules of the Danish Institute of Arbitration for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of three arbitrators; CUSTOMFAN and the Purchaser shall appoint one arbitrator each, and the chairman of the arbitral tribunal shall be appointed by the Danish Institute of Arbitration. If either party fails to nominate an arbitrator within 14 days from the notice of arbitration, the Danish Institute of Arbitration shall appoint an arbitrator on its behalf. The language of the arbitration shall be English.
- (4) Nothing in this Agreement shall limit any party's right to bring actions for temporary injunctive relief to a competent court under applicable law, if necessary, to preserve such party's rights pending final resolution of the dispute.

### **13. CONFIDENTIALITY**

- (1) Each party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other which it has obtained or received as a result of discussions leading up to entry into the Contract, or which it has obtained during the course of the Contract, except any information that is:
  - (a) subject to an obligation to disclose under law, or that is required to be disclosed by any competent regulatory authority, by notice or otherwise;
  - or
  - (b) already in its possession, other than as a result of a breach of this clause;
  - or
  - (c) in the public domain, other than as a result of a breach of this clause.
- (2) Each party undertakes to the other to take all steps that are necessary from time to time to ensure compliance with the provisions of this clause by its employees, agents and subcontractors.

## **14. NOTICES**

- (1) Any notice or other communication to be given under the Contract shall be in writing and in the English language and may be delivered by hand or sent by pre-paid post (by airmail post if to an address outside the country of posting) or fax to the relevant party at that party's trading address.
- (2) Any notice or document shall be deemed served:
  - (a) if delivered by hand, at the time of delivery unless delivered after 5.00 pm, in which case they shall be given the next day (other than Saturday or Sunday) on which the banks are ordinarily open for business in Denmark ("Working Day");
  - (b) if posted, two Working Days after posting (five Working Days if sent by airmail post); and
  - (c) if sent by fax, at the time of transmission printed on the transmission confirmation sheet provided that an error-free transmission report has been received by the sender and if the time of transmission is after 5.00 pm on a Working Day or at any time on a day that is not a Working Day the notice shall be deemed to have been received at 9.00 am the next Working Day.
- (3) Notices under the Contract shall not be validly served by e-mail unless receiver acknowledges receipt.

## **15. SURVIVAL OF OBLIGATIONS**

- (1) Any of the provisions of the Contract that are expressed to take effect in whole or in part, on or after termination, or are capable of having effect after termination, shall remain in full force and effect despite termination.

## **16. AMENDMENT AND WAIVER**

- (1) No variation of the Contract shall be effective unless it is made in writing, refers specifically to the Contract and is signed by both of the parties or accepted by emails acknowledged by both of the parties.
- (2) No waiver of any term, provision or condition of the Contract shall be effective, except where it is clearly made in writing and signed or accepted by the waiving party. No waiver of any particular breach of the Contract shall be held to be a waiver of any other or subsequent breach.
- (3) No omission or delay on the part of any party in exercising any right, power or privilege under the Contract shall operate as a waiver by it or of any right to exercise it in future or of any other of its rights under the Contract.
- (4) The rights and remedies arising under, or in connection with, the Contract are cumulative and, except where otherwise expressly provided in the Contract, do not exclude rights and remedies provided by law or otherwise.

## **17. ASSIGNMENT**

- (1) The Purchaser shall not, without the prior written consent of CUSTOMFAN, assign, transfer, charge or deal in any other similar manner with the Contract or its rights or any part of them under the Contract, subcontract any or all of its obligations under the Contract, or purport to do any of the same.

## **18. THIRD PARTY RIGHTS**

- (1) No person who is not a party to the Contract shall have any right to enforce any term of the Contract.