

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS - In these conditions the following words have the following meanings unless the context requires otherwise.

"Contract" any contract between Us and You incorporating these conditions for the sale of Product/Services;
"Data Sheet" the document We supply to You accompanying the Products containing a description of the Products and information on their packaging and optimum use;
"Field of Use" the field of use and/or application for which You engage Us to provide the Services/Products; as is described in the Our quotation;
"Liability" liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;
"Products" any products ordered from Us by You and/or any products/materials are to be utilised in the performance of the Services;
"Services" services and/or work to be performed by Us for You.
"We, Us, Our" the person or organisation to whom We supply the Products/ Services;
"Wo, Us, Our" Axair Fans UK Limited (company registration number 02701642) trading from Lowfield Drive, Centre 500, Wolstanton, Newcastle under Lyme, Staffordshire ST5 0UU.

2. BASIS OF CONTRACT

2.1 These conditions shall govern the agreement between the parties to the exclusion of any other conditions.
2.2 Orders placed by You leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.
2.3 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to You.
2.4 No variation to these conditions shall be binding on Us unless contained in Our quotation and agreed in writing by a director of Ours.
2.5 Our employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Products/Services unless confirmed by a director of Ours in writing.
2.6 No oral warranties or representations shall bind Us.
2.7 A reference to writing or written includes faxes and emails.
2.8 You acknowledge that You do not rely on any representation and/or warranty which has not been made in accordance with these conditions.

3. ORDERS AND CONTRACT

3.1 "Quotations" (unless stated otherwise) shall be available for acceptance for the period of time as stipulated on the Quotation. Quotations may be withdrawn by Us at any time.
3.2 We shall have the right to refuse to accept any orders placed for Products/Services.
3.3 You shall be responsible for the accuracy of an order and for giving Us any information necessary for Us to perform the Contract.
3.4 The Contract between the parties shall come into effect on Our acceptance of Your order
3.5 No order for Products/Services shall be deemed accepted by Us until confirmed in writing by Our authorised representative.
3.6 If You cancel this Contract for any reason You shall have no further recourse against Us under this Contract.

4. SAMPLES

4.1 The production of any samples or test work by You shall, unless otherwise agreed in writing, be carried out at Your cost.
4.2 If You approve any sample produced or test work performed by Us then You shall have no claim in respect of, nor any right to reject, any Products/Services provided the Products/Services in question are of the same description, specification, quality and fitness for purpose as the sample and/or test work as appropriate.
4.3 Due to nature of the Products, their performance is subject to technical tolerances and performance variations are given by manufacturers in accordance with manufacturing guidelines and information provided on Data Sheet. We cannot guarantee that the performance of the Product and samples will be identical.

5. DELIVERY

5.1 Dates for delivery/performance are estimates only and are not guaranteed and time is not of the essence. They are also subject to any matter beyond Our control.
5.2 If We specify a date for delivery, We will use Our reasonable endeavours to ensure delivery/performance on the date(s) specified.
5.3 Where Products are to be delivered in instalments, each delivery shall constitute a separate and distinct contract and Our failure to deliver, or any claim by You in respect of, any instalment shall not entitle You to repudiate and/or terminate this Contract as a whole.
5.4 Where Services are to be performed in stages, each separate stage shall constitute a separate and distinct contract and Our failure to deliver, or any claim by You in respect of, any stage shall not entitle You to repudiate and/or terminate this Contract as a whole.
5.5 You shall have no right to reject Products/Services and shall have no right to rescind for late delivery/performance unless the due date for delivery/performance has passed and You have served a written notice on Us requiring the Contract to be performed and giving Us not less than 180 days in which to do so and the notice has not been complied with.
5.6 We shall not be required to fulfill orders in the sequence in which they are placed.
5.7 You shall be responsible at Your own cost for all arrangements to unload the Products when delivered to You. Delivery will normally be made between 7.00am and 6.30pm on working days.
5.8 You shall procure during normal working hours that We have free right of access to the address for delivery.
5.9 If You refuse to take delivery of any Products/allow performance of the Services then We shall be entitled to withhold delivery/performance of any other Products/Services, to treat this Contract as repudiated by You and have the right to rescind this Contract.
5.10 If it is agreed that the Products are to be collected from Our premises then You shall collect them within 3 working days of being notified that they are ready for collection. If they are not collected within the specified period We may despatch them to You at Your expense and risk and/or store them at Your expense and risk until despatch and/or collection and/or withdraw from sale.

6. POSTPONEMENT

6.1 We may comply with reasonable requests to postpone delivery of the Products/performance of the Services up to a maximum total period of 60 days but shall be under no obligation to do so.
6.2 Where delivery of the Products/performance of the Services is postponed at Your request You shall pay all Our costs and expenses incurred as a result including storage, transportation and insurance. You shall be obliged to pay for the Products/Services as if delivery/performance had not been postponed.

7. PRICE AND PAYMENT

7.1 The price of the Products/Services shall be as at the date of delivery/performance.
7.2 Except as otherwise stated, prices are ex-works, and You shall be liable to pay charges (if any) for transport, packaging and insurance.
7.3 We may vary Our prices in relation to the Products/Services which We have agreed to supply where the increase is to take account of increases in costs/fluctuations in exchange rates, expenses and/or materials supplied by Us.
7.4 Our prices exclude VAT, taxes, duties and/or other charges for which You shall additionally be liable.
7.5 Our terms of payment are net cash or cleared funds within 30 days from the date of invoice. Time for payment shall be of the essence.
7.6 If You fail to make any payment in full on the due date We may charge any reasonable additional administration costs and/or interest (before and after judgment) on the amount unpaid at the rate of 2% above the base rate from time to time of Our bank or the then prevailing rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), whichever is the higher. Such interest shall be compounded with monthly rests.
7.7 Any monies received by Us may be applied by Us at Our option against any additional administrative costs and/or interest charged prior to application against any principal sums due from You.
7.8 We shall be entitled to invoice each delivery of Products/Service separately.
7.9 You shall pay all sums due to Us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
7.10 Payment shall not be deemed to be made until We have received cleared funds for the full amount outstanding.
7.11 We shall be entitled to render an invoice to You any time after the Products have been ordered or any stage during performance of the Services.
7.12 If payment in full is not made to Us when due We may withhold or suspend future or current deliveries of the Products/Services and delivery/performance under any other agreement with You.
7.13 If any Services are cancelled or this Contract terminated or delivery/performance is suspended before completion of the Services We shall be entitled to be paid on a quantum meruit basis for that part of the Services performed. We may invoice You accordingly and such monies shall be immediately due for payment.

8. CREDIT LIMIT

8.1 We may set a reasonable credit limit for You which is subject to change from time to time.
8.2 We reserve the right to refuse to accept orders for Products/Services and/or to suspend or withhold delivery of Products/performance of Services if that would result in You exceeding Your credit limit or if Your credit limit is already exceeded.

9. CANCELLATION

9.1 Subject to clause 9.4, You may cancel performance of the Services at any time up to 21 days before the due date for performance (unless otherwise agreed with a director of the Company writing) on condition that We shall have no Liability to You in relation to any such cancellation.
9.2 You may not cancel delivery of the Products that are obtained by Us solely for You.
9.3 If We agree to manufacture or acquire bespoke Products in accordance with the terms of this Contract You may cancel delivery of the Products at any time up to the lead time stipulated on the specification by the Us plus 14 days.

9.4 You shall indemnify Us on a full indemnity basis for all and any unrecoverable costs and/or expenses incurred by Us in relation to the performance of this Contract.

10. SPECIFICATION

10.1 Any specification supplied by Us shall only be approximate unless stated on the Quotation or agreed in writing.
10.2 The quantity, quality, description and/or specification for the Products/Services shall be that set out on Our Quotation and accompanying Data Sheet (if applicable) unless otherwise agreed in writing by the Parties.
10.3 You are responsible for checking the quotation and satisfying Yourself that any specification given in a Data Sheet is accurate and adequate for the Products/Services.
10.4 You warrant that You have disclosed in writing all matters which may affect the fitness for purpose of the Products.
10.5 We will have no Liability for errors in any specification or details supplied by You and You are solely responsible for their accuracy.
10.6 If We make an error in the specification then, where that error is material and You have relied upon You may cancel that part of the Contract which is affected by the error without Liability.
10.7 Details and/or specifications in brochures, price lists and/or manufacturers Data Sheets are a guide only and only give a general approximation of the Products/Services.
10.8 You confirm and agree that You have not relied upon the details and information contained in Our brochure. You have declined to write confirmation of their accuracy from Us.
10.9 We reserve the right to change the specification of the Products/ as required from time to time by law, safety requirements or manufacturing requirements.
10.10 If We change the specification of the Products/Services and this has a material adverse effect then You shall have the right to cancel the Contract without Liability.
10.11 We reserve the right to withdraw from sale any Product/Service that is rendered obsolete by changes in legislation.

11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

11.1 You shall not make any modification to the Products or their packaging, nor alter, remove, or tamper with any trade marks used on or in relation to the Products/Services.
11.2 All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, whether existing in the world together with the right to apply for protection of the same) in the Products/Services shall be owned by Us absolutely.
11.3 We grant to You a non-exclusive royalty-free perpetual licence to use within the Field of Use all intellectual property rights owned by Us which arise solely from the Services.
11.4 We shall be free to utilise for the benefit of Our other customers any skill/know-developed or acquired in the performance of the Services.
11.5 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

12. SITE FOR SERVICES

12.1 You will allow and/or procure sufficient access to Our employees, sub-contractors and/or agents to carry out the Services.
12.2 You will allow and/or procure sufficient unloading space, facilities, equipment and access to power supplies for the Services to be carried out.
12.3 You will ensure that the site where the Services are to be performed is cleared and prepared before the Services are due to commence.

13. PROPERTY AND RISK

13.1 Risk in the Products shall pass to You at the time of delivery. Delivery shall be deemed to occur:
13.1.1 when the Products leave Our premises; or
13.1.2 at the time when the Products arrive at the place of delivery if We deliver them by Our own transport or arrange transport in accordance with a specific contractual obligation; or
13.1.3 after the expiration of 3 working days after You have been notified of it, if the Products are available for collection from Us in accordance with clause 5.10
13.2 Risk of damage to or loss of the Products shall pass to You on despatch.
13.3 Risk of damage to or loss of the Products utilised in the Services shall pass to You upon delivery to the site where they are to be utilised.
13.4 We shall retain title and ownership of the Products until We have received payment in full in cash or cleared funds of all sums due and/or owing for all Products/Services supplied to You under this Contract and any other agreement between us.
13.5 Until payment in full of the price for all Products supplied to You the Products shall be stored separately from any goods belonging to You or any third party and must be clearly marked and identified as being Our property. You agree that Our employees and/or agents shall be entitled to enter Your premises at any time to check compliance with this clause.
13.6 Until title in the Products has passed to You, You shall keep them insured for the price at which they were sold to You against all normal risks and shall procure that Our interest is noted on such policy of insurance. You shall hold any proceeds of such policy of insurance on trust for Us upon receipt. Any monies We receive from Us in accordance with this clause shall not discharge Your Liability to pay for the Products/Services plus interest accrued in accordance with clause **Error Reference source not found**, but shall be set off against any such liability.

14. DEFAULT

14.1 If You:
14.1.1 fail to make any payment to Us when due;
14.1.2 breach the terms of this Contract and, if the breach is capable of remedy, do not remedy the breach within 7 days of receiving notice requiring the breach to be remedied
14.1.3 persistently breach any one or more terms of this Contract;
14.1.4 propose or charge any Products which remain Our property, or cease or threaten to cease to carry on business, or purports to compound with Your creditors, apply for an interim order under Section 252 Insolvency Act 1986 or have Bankruptcy Petition presented against You, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver appointed over all or any of Your assets, or take or suffer any similar action in any jurisdiction;
14.1.5 exceed the credit limit set by Us;
14.1.6 appear to Us or to Your credit rating to be financially inadequate to meet Your obligations under the Contract; and/or
14.1.7 appear reasonably to Us to be about to suffer any of the above events;
then We shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 14.2 below.
14.2 If any of the events set out in clause 14.1 above occurs in relation to You then:
14.2.1 We may enter, without prior notice, any of Your premises (or third parties with their consent) where Our Products may be and repossess and dispose of or sell any of Our Products found whether or not incorporated into other goods (provided that the Products have not been irrevocably incorporated into other goods) so as to discharge any sums due to Us under this Contract or any other agreement with You.
14.2.2 We may require You not to re-sell, incorporate any of the Products into other goods or part with the possession of any of Our Products until You have paid in full all sums due to Us under this Contract or any other agreement with You;
14.2.3 We may withhold delivery of any undelivered Products and stop any Products in transit;
14.2.4 We may withhold the performance of any Services and cease any Services in progress;

15. GUARANTEE

15.1 Products supplied by Us may at Our sole discretion be accompanied by a 12 month guarantee from the date of first purchase by You.
15.2 Any guarantee in clause 15.1 above is given subject to You providing full details of the invoice to which the Products relate including the date of purchase and date of delivery.
15.3 We shall have no Liability in respect of:
15.3.1 any defect in the Products/Services arising from any drawing, design or specification supplied by You;
15.3.1 any defect in the Products/Services arising from any drawing, design or specification supplied by You;
15.3.2 any faults arising after risk in the Products has passed which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Products/Services as appropriate;
15.3.3 Your use of the Products for any purpose which they were not designed; and/or
15.3.4 any faults or defects caused by accidental damage, wilful damage, abnormal working conditions, failure to follow instructions, misuse, alteration or repair, natural phenomenon or improper maintenance or negligence on Your part or that of a third party.
15.3.5 any defect, unless such defect is notified to Us within 24 hours in writing of the defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by You.
15.4 If any Products/Services prove to be defective and are covered by the guarantee in clause 15.1 above

then We shall at Our sole option either repair or replace such Products or refund the price then. Provided We comply with this clause, the repair, replacement or refund shall be Your sole remedy in respect of claims under the guarantee under clause 15.1 above
15.5 Any work carried out by Us which is not covered by the guarantee in clause 15.1 above will be charged for.

15.6 You shall reimburse all reasonable expenses properly and necessarily incurred by Us in the repair, replacement of defective Products or re-performance of defective Services whether or not covered by a guarantee in clause 15.1 above.
15.7 We agree to repair, replace or re-perform defective Products covered by the guarantee in clause 15.1 above within a reasonable time of being notified of the defect by You.
15.8 Any guarantee given in clause 15.1 above will not apply if You have not paid in full for the relevant Product/Service on the due date for payment.

16. REPAIRS AND REPLACEMENTS

16.1 We will at Our option either:
16.1.1 refund the price, repair, replace free of charge or re-perform any Products that have a manufacturers defect where the defect is apparent on inspection provided that the defect is notified to Us within 14 days of delivery; or
16.1.2 refund the price, repair or replace free of charge any Products that have been damaged in transit provided that such damage is notified to Us within 24 hours of delivery in writing.
16.2 Any defective Products must be returned to Us for inspection if requested by Us at Your sole expense (including charges for multiple deliveries) before We will have any Liability.
16.3 Any defective Products returned to Us will only be accepted if:
16.3.1 accompanied by the correct completed returns paperwork; and
16.3.2 You have provided full details of any hazardous and potentially hazardous materials that the Products have been exposed to whilst in Your possession;
16.3.3 You warrant that upon return the Products are not contaminated with any hazardous substance and You provide a certified COSHH declaration to that effect if required.
16.4 We reserve the right to inspect the subject-matter of any allegedly defective Services and We will not have any Liability for defective Services until We have been allowed to make such inspection.
16.5 We will at Our option either refund the price of or replace free of charge any Products missing from a delivery provided that the missing items are notified to Us within 24 hours of delivery, or, in the event of total non-delivery, We are notified within 24 hours of the agreed date for delivery.

17. LIMITATIONS ON LIABILITY

17.1 We shall have no Liability for:
17.1.1 any defect in the Products caused or contributed to as a result of them being used for display or demonstration purposes or being handled by Your customers;
17.1.2 defective Products/Services where the defect has been caused or contributed to by You to the extent so contributed;
17.1.3 any defect if the price for the Products/Services has not been paid in full by the due date for payment;
17.1.4 defective Products/Services, Products not despatched or Products damaged or lost in transit unless the event is notified to Us in writing within the appropriate time limit set out in this Contract;
17.1.5 damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Products/Services after a defect has become apparent or suspected or should reasonably have become apparent to You.
17.2 You shall give Us a reasonable opportunity to remedy any matter for which We may be liable before You incur any costs and/or expenses in remedying the matter Yourself. If You do not do so We shall have no Liability to You.
17.3 You shall produce to Us written evidence of any claims for which it is alleged that We are liable together with written details of how the loss was caused by Us and the steps You have taken to mitigate the loss before We shall have any Liability for the claim by You.
17.4 We shall have no Liability to You to the extent that You are covered by any policy of insurance and You shall ensure that Your insurers waive any and all rights of subrogation they may have against Us.
17.5 We shall have no Liability for any matters outside Our reasonable control.
17.6 We shall have no Liability to You for any:
17.6.1 consequential losses;
17.6.2 loss of profits and/or damage to goodwill;
17.6.3 economic and/or other similar losses;
17.6.4 special damages and indirect losses; and/or
17.6.5 business interruption, loss of business, contracts, opportunity and/or production.
17.7 You shall be under a duty to mitigate any loss, damage, costs or expenses that You may suffer (including by maintaining an adequate stock of Products).
17.8 Our Liability to You in relation to any one claim shall not exceed 125% of the value of this Contract. To the extent that any Liability of Us to You would be met by any insurance of Ours then Our Liability shall be extended to the extent that such Liability is met by such insurance.
17.9 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
17.9.1 Liability for breach of contract;
17.9.2 Liability in tort (including negligence);
17.9.3 Liability for breach of statutory duty; and
17.9.4 Liability for breach of Contract Law, except clause 17.8 above which shall apply once only in respect of all the said types of Liability.
17.10 Nothing in this Contract shall exclude or limit Our Liability for death or personal injury due to Our negligence or any Liability which is due to Our fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
17.11 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
17.12 Nothing in this Contract shall exclude or limit Your statutory rights which may not be excluded or limited due to You being a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to the extent, have no force or effect.
17.13 The limitations in this Contract are necessary in order to allow Us to provide the Products/Services at Our current prices.
17.14 If You require greater protection then We will agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the Products/Services.

18. GENERAL

18.1 You agree to indemnify and keep indemnified Us against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by Us and arising from or due to:
18.1.1 any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by You; and/or
18.1.2 Your purported cancellation of the Contract later than the timeframes set out in clause 9; and/or
18.1.3 Your refusal to accept delivery/performance of any ordered Products/Services; and/or
18.1.4 Our use of Your drawings and/or specifications for Products.
18.2 No waiver by Us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
18.3 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
18.4 We shall have no Liability to You for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside Our reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions, trespass by any third party and any other similar events. If We are affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
18.5 We shall not assign Our interest in the Contract (or any part) without the Your written consent.
18.6 All third party rights are excluded and no third party shall have any right to enforce this Contract. This shall not apply to members of Our group.
18.7 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.