

Zehnder Group UK Limited (CRN: 02296696) of Concept House, Watchmoor Point, Camberley, Surrey  
GU15 3AD (“Zehnder”, “We”, “Us” and “Our”) Commercial Supply Terms of Trading

**IMPORTANT:** Once a contract comes into effect, these terms and conditions will create legally binding rights and obligations. Please read through these terms and conditions carefully prior to placing an order. In particular, your attention is drawn to clauses 9 (Warranties and Indemnity) and 11 (Specifications and Samples) as they contain important limitations and exclusions of Our liability and that of Our Group (as defined in clause 3.1 below).

## 1 Creation of contract

- 1.1 Any order for goods, and for services (where services are applicable to the order), (the “**Order**”) shall constitute an offer to purchase:
- 1.1.1 the goods detailed in the relevant Order (the “**Goods**”); and
- 1.1.2 where applicable, the services (which includes the deliverables (the “**Deliverables**”)) which are detailed in the relevant Order (the “**Services**”)
- on the basis set out in these terms and conditions.
- 1.2 You agree that these terms and conditions shall apply to the exclusion of any other terms and conditions.
- 1.3 A valid and enforceable contract between the person placing the relevant Order (“**You**” / “**Your**”) and Us for the sale and purchase of the Goods/Services shall come into effect on the basis of (a) these terms and conditions, (b) the identity of the purchaser, delivery address (if any), and the identity and quantity of Goods and the specification Services detailed in the Order (which are hereby incorporated in to the Contract by reference) but for the avoidance of doubt no other aspects of the Order shall form part of the Contract (as defined below), (c) any order confirmation issued by Us in respect of the relevant Order and (d) any written statements of the type referred to in clause 9.1.6 (the “**Contract**”) upon the first to occur of Us accepting the relevant Order by (i) issuing an order confirmation in respect of the relevant Order (“**the Order Confirmation**”) or (ii) Us beginning to process the relevant Order on Our electronic order management system. We may reject any Order prior to acceptance by us.

## 2 Price

- 2.1 All sums stated by Us (including, for example, prices quoted, and any other charges stated in these terms) exclude VAT and any other applicable taxes, duties and levies (“**VAT**”) (unless otherwise stated in writing) and all relevant Goods/Services are sold subject to these terms and conditions. VAT will be charged at the rate applying at the time of delivery.
- 2.2 Orders are subject to a minimum order value, for Ventilation Products a £15 charge will be applied to orders under £350. For Heating Products a value of £10 will be charged for orders under £50.
- 2.3 Our quotations lapse after 30 days (unless otherwise stated in writing). Quotations do not constitute an offer capable of acceptance by You. If You wish to purchase some or all the Goods/Services detailed in a quotation, you must submit an Order as described above.
- 2.4 The price quoted includes delivery (unless otherwise stated in writing).
- 2.5 Unless a formal written quotation is provided by Us or the prices for the relevant Goods/Services are confirmed in the relevant Order Confirmation, all prices quoted are illustrative estimates only and the price charged will be Our current price in force at the time of delivery of the relevant Goods/Services, calculated by reference to clause 5.2.
- 2.6 Rates of VAT (as defined in clause 2.1 above) charged in respect of the Goods/Services will be those applying at the time of delivery calculated by reference to clause 5.2.
- 2.7 Where We agree to any variation of these terms the price may also be increased.
- 2.8 At any time before delivery (calculated by reference to clause 5.2) We may adjust the price to reflect any increase in Our costs of supplying the Goods/Services. The revised price shall be binding on You.

## 3 Delivery & Inspection

### of Goods Delivery:

- 3.1 All delivery times quoted are estimates only. Neither We nor any member of Our group (being Our parent undertakings from time to time, Our subsidiary undertakings from time to time and the subsidiary undertakings of each of Our parent undertakings from time to time – such expressions having the meanings ascribed to them in section 1162 of the Companies Act 2006, Our “**Group**”) shall have any liability to You whatsoever for any costs, expenses, damage or loss

(including but not limited to any indirect or consequential loss) resulting from delayed delivery or availability. Please do not book a plumber/installer for the item to be installed until You received all the Goods and checked for any potential discrepancies, which must be reported to Zehnder within 3 days of delivery to You.

3.2 If We fail to deliver within a reasonable time, You may (by informing Us in writing and subject always to clause 14.2) cancel the Contract, however:

3.2.1 You may not cancel if:

3.2.1.1 We receive Your notice after the Goods have been dispatched or You have been notified that the relevant Goods are ready for collection by You (as appropriate); or

3.2.1.2 You are in breach of any of these terms and conditions (for example clause 3.5).

3.2.2 If You cancel the Contract, You agree that such cancellation is on the basis that You have no further claim against Us under the Contract.

3.3 If You accept delivery of the Goods:

3.3.1 after the estimated delivery time;

3.3.2 after We have increased the price of the Goods pursuant to clause 2.8

In each case, it will be on the basis that You have no claim against Us for delay or such increase in price (as appropriate).

3.4 When We notify You that the Goods are ready to be delivered You shall accept immediate delivery or in the case of collection, where We notify You that the Goods are ready to be collected You must arrange to collect the Goods within 5 (five) working days being any day other than a Saturday, Sunday or bank or public holiday in England, ("**Working Days**") of the date of Our notice.

3.5 If for any reason You fail to accept delivery of any Goods when they are ready for delivery, or We are unable to deliver the Goods because You have not provided adequate instructions, or if You do not collect the Goods by the required date for collection (calculated by reference to clause 3.4), We may:

3.5.1 treat the Goods as having been delivered on that day for the purposes of risk and payment;

3.5.2 charge You for the storage and redelivery of those Goods; and / or

3.5.3 give You 14 (fourteen) days' notice requiring You to take delivery of the Goods at any time. After expiry of such notice We may resell or otherwise dispose of the Goods.

provided always that this clause 3.5 will not affect any other rights We may have against You in respect of Your breach of the Contract.

3.6 We may deliver the Goods in instalments. Each instalment is treated as a separate contract.

3.7 We may decline to deliver if:

3.7.1 We believe that it would be unsafe, unlawful or unreasonably difficult to do so; or

3.7.2 the premises (or the access to them) are unsuitable for Our vehicle or that of Our carrier

in which case We will attempt to arrange an alternative time, date and, if necessary, place for delivery and if this is not reasonably practicable We may cancel the Contract or the affected part of it. Where We are able to arrange an alternative delivery with You, We may charge You additional fees for such delivery.

3.8 Where We arrange for a third party to deliver the Goods to You and/or arrange for insurance of the Goods in transit, We shall be considered to be acting as Your agent and the provisions of subsections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall not apply.

3.9 You warrant that You will install or arrange for the installation of the Goods in line with Our instructions as updated from time to time and We will have no liability or responsibility to You whatsoever for any delays or liabilities or costs arising as a result of or in connection with a failure to install the Goods in accordance with Our instructions as updated from time to time.

#### **4 Inspection:**

4.1 You must inspect the Goods on delivery. If any Goods are damaged or not delivered, You must write to tell Us within three Working Days of delivery or the expected delivery time, for damaged items We will require photographic evidence. You must give Us (and any carrier) a fair chance to inspect the damaged Goods or verify the shortage.

4.2 You shall not be entitled to reject the Goods or any part of them where the sole reason is short delivery.

4.3 If You fail to notify Us in the time and manner specified in clause 4.1 above:

4.3.1 You shall not be entitled to reject the Goods;

4.3.2 You shall be deemed to have accepted that the Goods are in accordance with the Contract in terms of product type, quantity delivered and freedom from damage;

4.3.3 We shall have no liability whatsoever to You in respect of the delivery of the relevant Goods; and

4.3.4 You shall pay the price of the Goods as if they had been delivered in accordance with the Contract.

4.4 The time for making all notifications under clause 4.1 is of the essence.

## **5 Risk**

5.1 The Goods are at Your risk from the time of delivery and risk will always pass to You prior to the installation of the Goods.

5.2 Delivery takes place on the first to occur of either:

5.2.1 when the Goods are loaded on to the collection vehicle by Us at Our premises (if You are collecting them or arranging carriage); or

5.2.2 when the Goods have been unloaded by Us or Our carrier at the premises or address specified by You (if we are arranging carriage); or

5.2.3 when delivery is deemed to have taken place under clause 3.5.1.

5.3 Where We arrange for the Goods to be delivered to You by Us or Our carrier then:

5.3.1 You shall be responsible for ensuring that:

5.3.1.1 delivery is to be made on hard roads to a hard and safe draw-in site suitable for unloading the Goods to the roadside during normal working hours (being 9am – 5pm) on Working Days;

5.3.1.2 the Goods are able to be stacked on good firm level and cleared ground upon unloading by Us or Our carrier;

5.3.1.3 the Goods are able to be properly and safely off-loaded from the delivery vehicle by Us or Our carrier;

5.3.1.4 You are able to store and protect the Goods at Your own expense; and

5.3.1.5 You have personnel available to move the Goods from the roadside in to the premises or address of delivery as deliveries will be made as per clause 5.3.2 below.

5.3.2 All deliveries will be to the roadside of the premises or address to which You have requested the Goods be delivered. Our drivers are not permitted to take the Goods in to the premises or address of delivery as they are not insured to do so.

5.3.3 On Our request or that of Our carrier You will on delivery (as determined in accordance with clause 5.2) sign a receipt slip in respect of Goods delivered. Any damage or shortfall must be notified in accordance with clause 4.1.

5.4 Where You collect the Goods from Our premises then:

5.4.1 You shall be responsible for ensuring that:

5.4.1.1 the collection of the Goods is arranged in advance by You and agreed by Us;

5.4.1.2 the Goods are collected in suitable and safe vehicles during normal working hours (being 9am – 5pm) on Working Days ; and

5.4.1.3 at Your own expense, the Goods are properly and safely off-loaded, stacked, stored and protected at Your premises.

5.4.2 entry by You and Your vehicle or Your carrier and their vehicle onto Our premises shall be at Your own risk or Your carrier's own risk respectively.

## 6 Services and Deliverables

- 6.1 We shall exercise reasonable skill and care in the supply of the Services.
- 6.2 **IMPORTANT: System design:** Subject to clause 6.1 where the Services or Deliverables include any designs, drawings, or specifications, they are provided for general information and reference only. The parties acknowledge and agree that You take full responsibility and liability for any design contained in such Deliverables and You shall have full and sole design responsibility in respect of the project, including in respect of the Deliverables. It is Your responsibility to produce designs in all elements of the project and for making such changes, updates or amends to the Deliverables as required to produce a valid and workable design.
- 6.3 Notwithstanding the generality of clause 6.2, the use of and reference to the Deliverables, or other information provided to Us by You shall not relieve You of Your liabilities with regard to ensuring the accuracy, integrity, suitability and general fitness for purpose of this information and its subsequent use. You are responsible for ensuring the suitability, conformity and interoperability of (a) the Goods and (b) any indicative system design suggestions and system layout drawings created and / or provided by Us or on Our behalf (which, for the avoidance of doubt, shall form part of the Deliverables) with (i) Your heating / cooling / ventilation system (as appropriate) and (ii) Your design and specification requirements. It is important that You undertake such verification with an appropriately qualified expert third party appointed by You who holds appropriate professional qualifications and appropriate levels of professional indemnity and public liability insurance.
- 6.4 Notwithstanding the generality of clause 6.2, You warrant that You shall satisfy yourself as to the suitability of the use of the Deliverables to meet local conditions, building requirements or any other factors which may in any way affect the operation of the Goods and the Deliverables.
- 6.5 We shall not undertake any installation of the Goods as part of the supply of the Services.
- 6.6 You accept that the Deliverables are supplied by Us on the basis of the information supplied by You and You warrant, represent and undertake to Us such information is true, accurate, complete and not misleading at all times and that You shall immediately update Us of any changes to such information.
- 6.7 You shall notify Us in writing if You make any alterations or deviations in Your requirements, and the parties must agree to them in writing prior for them to be deemed a variation to the Order.
- 6.8 We reserve the right to make any changes to the Deliverables which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 6.9 You warrant and undertake to Us that You shall seek approval from all regulatory authorities and regulatory bodies for the proposed design concept prior to placing an Order.
- 6.10 We shall not be liable or responsible for any use of the Deliverables by You in contravention of any regulatory authorities', regulatory bodies' or similar entity's rules and regulations.

## 7 Payment terms

- 7.1 You are to pay Us in cleared funds prior to delivery, unless You have an approved credit account.
- 7.2 If You have an approved credit account, payment is due no later than 30 days following the end of the month in which the Goods are delivered or collected (as appropriate), unless otherwise agreed in writing by Us. If You pay by cheque, You will not be deemed to have paid until the relevant cheque has been credited to Our bank account in cleared funds.
- 7.3 Where the cost of delivery, packaging, VAT or any other charges are stated separately from the price for the Goods, they will nevertheless be payable at the same time as if they formed part of the price of the relevant Goods.
- 7.4 If You fail to pay Us in full on the due date We may, without prejudice to any other rights:
- 7.4.1 suspend or cancel any future deliveries without incurring any liability to You. Where We elect to suspend future deliveries, You will still be bound by the Contract;
  - 7.4.2 cancel any discount offered to You;
  - 7.4.3 charge You interest at the rate set under s.6 of the Late Payment of Commercial Debts (Interest) Act 1998 ("the Act") calculated (on a daily basis) from the date following the date of delivery (determined in accordance with clause 5.2) or expiry of Your credit period (whichever is the later) until payment;
  - 7.4.4 claim fixed sum compensation from You under s.5A of the Act to cover Our credit control overhead costs;
  - 7.4.5 demand immediate payment of all invoices issued to You whether or not they are outstanding at the relevant time;
  - 7.4.6 recover (including without limitation under clause 10.5) the reasonable cost of taking legal action to make You pay;

7.4.7 If You have an approved credit account, We may withdraw it or reduce Your credit limit or bring forward Your due date for payment; and We may take any of the actions detailed in clauses 7.4.1– 7.4.7 at any time without prior notice.

7.5 You do not have the right to withhold or set off any money You owe to Us on the basis or assertion that We or any member of Our Group owes money to You or that You have a claim against Us or Our Group.

7.6 While You owe money to Us, We have a lien on any of Your property in Our possession.

7.7 Time for payment is of the essence.

## **8 Title**

8.1 Until You pay all debts You owe Us:

8.1.1 all Goods supplied by Us remain Our property;

8.1.2 You must store all Goods supplied by Us separately from other goods and in suitable conditions and so that they are clearly labelled and identifiable as Our property;

8.1.3 You must insure them (against the risks for which a prudent owner would insure them) and hold the policy on trust for Us;

8.1.4 You may use those Goods and sell them in the ordinary course of Your business, but not if:

8.1.4.1 We revoke that right (by informing You in writing); or

8.1.4.2 You become insolvent.

8.2 If You sell any of the Goods in accordance with clause 8.1.4 before title has passed to You, You shall hold the proceeds on trust for Us and pay such proceeds to Us on demand.

8.3 You must inform Us (in writing) immediately if You become insolvent (on any of the bases set out in clause 14.4).

8.4 If Your right to use and sell the Goods ends You must allow Us to remove the Goods.

8.5 All Goods sold by You under clause 8.1.4 shall, in relation to Goods of the same description, be deemed to be sold on a “first in first out” basis.

8.6 Upon request You must notify Us of the location at which You are storing any Goods which remain Our property and You irrevocably agree that We (and Our agents, advisors and/or employees) have Your permission to enter any such premises where the Goods may be stored:

8.6.1 at any time, to inspect them; and

8.6.2 after Your right to use and sell them has ended, to remove them, using reasonable force if necessary. If any of the Goods have been fixed We may still remove them and in so doing We shall endeavour not to cause any unnecessary damage, but We will not be liable or responsible for any damage reasonably caused as a result of or in connection with such removal.

8.7 Despite Our retention of title to the Goods, We have the right to take legal proceedings to recover the price of Goods supplied should You not pay Us by the due date.

8.8 You are not Our agent. You have no authority to make any contract on Our behalf or in Our name.

## **9 IMPORTANT: Warranties and indemnity**

### **Warranty:**

9.1 We warrant that the Goods will, subject always to clauses 9.2– 9.6:

9.1.1 On delivery (as determined in accordance with clause 5.2) comply with the description (if any) contained in the Order Confirmation (if one is provided);

9.1.2 On delivery (as determined in accordance with clause 5.2) comply, subject always to clause 19.6, with (i) the technical specifications and performance figures detailed in the product brochures and product data sheets published by Us subject always to any qualifications detailed therein and (ii) the technical specifications and performance figures, if any, contained in the Order Confirmation (if one is provided) subject always to any qualifications detailed therein, in both cases (i) and (ii) when tested in accordance with the relevant British Standard;

- 9.1.3 On delivery (as determined in accordance with clause 5.2) comply with any sample which We agreed in writing would reasonably represent the Goods; and
- 9.1.4 Be free from material defects in materials and workmanship for a period of:
- 9.1.4.1 15 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for products in Our Tetro range, subject always to clause 9.1.4.7 below;
  - 9.1.4.2 10 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for aluminum and stainless steel radiators, subject always to clause 9.1.4.7 below;
  - 9.1.4.3 2 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for the following Zehnder branded products: For those registered with Us, by the qualified installer before the standard warranty ends and adhering to terms, the warranty will be extended from 2 to 6 years. Please refer to the terms and conditions of sales in our product registration process using the following link:  
<https://register.zehndergroup.com/en-GB/terms-of-use>
    - 9.1.4.3.1 ComfoAir, Comfo Spot Units and
    - 9.1.4.3.2 ComfoAir Q
    - 9.1.4.3.3 EVO
  - 9.1.4.4 5 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for steel and brass radiators with the exception of Charleston which is extended to 10 years from the 1<sup>st</sup> October 2024, subject always to clause 9.1.4.7 below;
  - 9.1.4.5 5 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for the following Greenwood Airvac branded products:
    - 9.1.4.5.1 Omnique, Elite 100 and Elite 150 intermittent extractor fans;
    - 9.1.4.5.2 Omnique continuous extractor fans; and
    - 9.1.4.5.3 Positive input ventilation products;
  - 9.1.4.6 3 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for Zehnder/ Greenwood Unity Fans;
  - 9.1.4.7 2 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 in respect of the electrical componentry forming part of electrified radiator products;
  - 9.1.4.8 2 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for all other Greenwood Airvac branded products which are not listed in clause 9.1.4.5;
  - 9.1.4.9 2 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for all other products not listed above; or
  - 9.1.4.10 5 years from the date of delivery (as determined in accordance with clause 5.2) and (where applicable) such additional period described in clause 9.1.4.11 for all Zehnder Radiant Heating and Cooling (RHC) panels also referred to as ZFP, Zip, Alumline and Carboline above; or
  - 9.1.4.11 where You are a business and You are purchasing the relevant Goods for the purpose of reselling such Goods to end-user customers then the warranty periods set out in clause 9.1.4 shall be extended by an amount of time equal to the time period between (i) delivery of the Goods to You (as determined in accordance with clause 5.2) and (ii) the date on which You sell the relevant Goods to an end user (being the date on which You becoming legally committed to sell and the end user becomes legally committed to buy the relevant Goods) PROVIDED ALWAYS that any extension to the warranty period under this clause shall not exceed a period of 6 months.

- 9.1.5 where Goods are to be replaced under warranty, please do not book for the item to be installed until You receive the Goods.
- 9.1.6 On delivery (as determined in accordance with clause 5.2) or for any longer period specifically stated therein comply with any statements, promises, representations, warranties, conditions and assurances made in writing by one of Our directors or senior managers and which are either contained in (i) Our written quotation (or any covering letter) relating to the relevant Goods or (ii) other written correspondence relating to the relevant Goods, in both cases (i) and (ii) which are not withdrawn before the Contract comes in to force and which expressly state that You may rely on such statements, assurances etc when entering into the Contract.
- 9.2 Save for the warranties provided in the Contract, so far as permissible at law, We do not make any representations or give any warranties as to the quality of the Goods or their fitness for any purpose. To the fullest extent permissible at law, We hereby exclude any other warranty, representation, term or condition that would otherwise be implied in to this Contract.
- 9.3 We shall have no liability in respect of any claim under clause 9.1 where the defect complained of arises from and / or is attributable to:
- 9.3.1 fair wear and tear;
- 9.3.2 willful damage;
- 9.3.3 mis-use and / or neglect;
- 9.3.4 abnormal working conditions;
- 9.3.5 the alteration, adaption or adjustment of the Goods without Our prior written approval;
- 9.3.6 the Goods slightly varying in colour or suffering some other minor alteration which may occur as a result of Our manufacturing process;
- 9.3.7 any damage to the Goods or other property during any installation process of the Goods;
- 9.3.8 any damage to the Goods or other property should the Goods not be installed in accordance with Our instructions; and
- 9.3.9 any of the facts or circumstances described in clause 10.3.2.
- 9.4 Any claim under the warranties in clause 9.1 shall be invalidated in the event of:
- 9.4.1 Your failure to notify Us in writing of any claims under such warranty as soon as reasonably practicable (and in any event within 14 days) of the relevant claim coming to Your attention;
- 9.4.2 a failure to use the Goods (i) for the purposes for which goods of the relevant Goods are reasonably intended and / or (ii) in accordance with Our instructions for use;
- 9.4.3 a failure to install the Goods in accordance with Our instructions on installation;
- 9.4.4 a failure to maintain the Goods in accordance with Our instructions on proper maintenance, using genuine Zehnder parts and filters.
- 9.4.5 installation or use of the relevant Goods in a manner that is inconsistent with the technical or safety laws or standard codes of practice (British Standard or equivalent) in the country where such Goods are installed or used;
- 9.4.6 the Goods being used with accessories, systems and other goods of a type, condition or standard other than prescribed by Us;
- 9.4.7 the Goods being removed from their originally installed position and re-installed elsewhere;
- 9.4.8 save in respect of electrified radiators, the Goods having been installed onto a heating system that (i) has not been cleaned/treated immediately prior to installation of the relevant Goods and / or (ii) which does not contain correct water treatments and inhibitors to the approved British Standard Code of Practice BS 7593 (or equivalent);
- 9.4.9 Your failure to pay the full purchase price for the Goods including the costs outlined in clause 7.3;
- 9.4.10 defects caused by and / or attributable to installation or service / repair / maintenance of the relevant Goods (except where We are the installer or conduct the relevant service / repair / maintenance); or
- 9.4.11 defects caused by and / or attributable to accidents, fire, liquids (in the case of electrical componentry only), chemicals and other similar substances, flooding, vibrations, excessive heat, power surges, excess or incorrect supply or input voltage, radiation, electrostatic discharges including lightning or external forces and impacts.
- 9.4.12 A failure to provide details of the service record where relevant.

- 9.5 The time for making all claims under the warranties provided in clause 9.1 is of the essence.
- 9.6 Subject to clause 9.8, You shall give Us or shall procure that We are given a fair opportunity to investigate any claims under the warranties provided at clause 9.1 which may include (but not be limited to) Us taking a sample of the Goods and having access to Your premises and procuring access to Us of Your customer's premises.
- 9.7 If as a result of a claim under the warranties provided in clause 9.1 the relevant Goods (or any of them) are found not to be in compliance with such warranties (following Our investigations pursuant to clause 9.6 and/or 9.8), and provided (i) You are not in breach of clause 9.4, (ii) none of the circumstances in clause 9.2 apply and (iii) You have complied with 9.6 (as appropriate) in full, We will (at Our option) either (a) repair the Goods, (b) replace the Goods or (c) refund the price You paid for the relevant Goods.
- 9.8 Single point extract ventilation fans warranty claim process:
- 9.8.1 if You wish to make a claim under the warranty in clause 9.1.4.8 in respect of a single point extract ventilation fan We will test and inspect the relevant Goods before deciding whether any action will be taken by Us pursuant to clause 9.7. Where no fault in the relevant Goods can be determined by Us (acting reasonably and in good faith), or (ii) the failure of the product is attributed to factors specifically excluded under the warranty conditions as described in clause 9.4, then in either case We may reject Your warranty claim and You will be notified within a reasonable time period giving the reason for rejecting the claim and We will not be obliged to take any of the actions described in clause 9.7 in respect of the relevant Goods.
- 9.8.2 where We reject a warranty claim which related to a single point extract ventilation fans then the relevant Goods may then (at Your choice) either be returned to You on payment of a delivery charge or disposed of by Us and no refund will apply. If no instruction to return the Goods is received within 10 Working Days of notification of rejection by Us of the relevant warranty claim, the Goods will be disposed of by Us and We shall have no liability to You whatsoever as a result of or in connection with such disposal.
- 10 Liability:**
- 10.1 Neither We nor any member of Our Group shall be liable (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) for any:
- 10.1.1 special, indirect or consequential loss and / or damage; or
- 10.1.2 loss of profits; or
- 10.1.3 loss of use
- In each case arising out of and / or in connection with the Contract (including without limitation the supply of Goods and their use).
- 10.2 Subject to clauses 10.1, 10.3 and 10.4, the total maximum aggregate liability of Us and Our Group, collectively, to You (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) arising out of and / or in connection with the Contract (including without limitation the supply and use of the Goods) is limited to 150% of the total Contract price, being the price payable for the Goods ordered under the Contract less any discounts and rebates, plus any delivery charges and VAT.
- 10.3 Subject to clause 10.4, We and Our Group hereby exclude any and all liability (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) arising out of and / or in connection with:
- 10.3.1 any indicative system design suggestions and system layout drawings created and / or provided by Us or on Our behalf – please see clause 6.2 for further details;
- 10.3.2 any failure of the Goods to comply with some or all of the warranties in clause 9.1 where such failure is caused by and / or attributable to:
- 10.3.2.1 the Goods having been integrated, combined or used with other systems, system components or products not provided by Us or on Our behalf;
- 10.3.2.2 system control conditions and / or system design; or
- 10.3.2.3 the Goods not being in every way similar to Goods of the same type previously supplied to You, unless We specifically guaranteed this to You in writing in respect of the relevant Goods.
- 10.4 Nothing in these terms restricts or limits Our liability or that of any member of Our Group for death or personal injury resulting from Our negligence or that of any member of Our Group or that of Our respective employees, officers or subcontractors, for fraudulent misrepresentation, or for any other matter in respect of which it would be unlawful for Us or any member of Our Group to exclude or limit liability.

10.5 You hereby agree to indemnify Us and each member of Our Group in full against and hold Us and each member of Our Group harmless from all:

- 10.5.1 losses;
- 10.5.2 costs (including without limitation financing costs and legal costs on a full indemnity basis);
- 10.5.3 claims;
- 10.5.4 demands;
- 10.5.5 damages;
- 10.5.6 expenses; and
- 10.5.7 liabilities

which We and / or any member of Our Group may suffer and / or incur (directly and / or indirectly) as a result of and / or in connection with:

- 10.5.8 any breach by You of any of Your obligations under these terms; and / or
- 10.5.9 any failure by You to use and / or install the Goods in accordance with Our instructions.

10.6 You hereby warrant to Us and each member of Our Group that You shall incorporate in to any agreement or arrangement under which the Goods are resold or provided to a third party limitation of liability provisions equivalent to and no less protective of Us and Our Group as those contained in clauses 10.1– 10.4 inclusive.

## **11 IMPORTANT: Specification and Samples**

11.1 If We prepare the Goods/supply the Services in accordance with Your specifications or instructions You must ensure that:

- 11.1.1 the specifications or instructions are accurate;
- 11.1.2 the Goods prepared in accordance with those specifications or instructions will be fit for the purpose for which You intend to use them; and
- 11.1.3 Your specifications or instructions will not result in the infringement by Us and / or Our Group of any intellectual property rights of a third party, or in the breach of any applicable law or regulation.

11.2 Neither We nor any member of Our Group shall be liable and / or responsible for the performance or suitability of Goods manufactured in accordance with Your specifications and / or instructions.

11.3 We reserve the right;

- 11.3.1 to make any changes in the specifications of Our products that are necessary to ensure they conform to any applicable safety or statutory requirements;
- 11.3.2 to make without notice any modifications in Our specifications We think necessary or desirable; and
- 11.3.3 to discontinue any of Our products without prior notice.

11.4 All samples supplied are for illustrative purposes only (unless agreed otherwise in writing in accordance with clause 9.1.3) and remain Our property. All samples are to be returned to Our office, delivery paid by You within one month of receipt unless We agree otherwise in writing.

11.5 We will make available on request information regarding the design, construction and proper installation of the Goods to ensure that, as far as is reasonably practicable, they are safe and without risk when properly used and installed. It is Your responsibility to take such steps as are necessary to ensure that the appropriate information is made available to any person to whom You supply the Goods or to whom You reasonably consider would require such information.

11.6 You hereby warrant to Us and each member of Our Group that You shall incorporate in to any agreement or arrangement under which the Goods are resold or provided to a third party provisions equivalent to and no less protective of Us and Our Group as those contained in clauses 11.1 and 11.2.

## **12 Return of Goods**

12.1 This clause 12 does not apply to claims under the warranties in clause 9 or in respect of Goods which are damaged on delivery, to which clauses 9 and clauses 4.1– 4.4 shall respectively apply.

12.2 We will only accept the return of Goods from You in exceptional circumstances and where the Goods are part of Our stock range. We cannot accept the return of non-stock Goods (as identified as such in Our brochure for the relevant brand which was in circulation at the date You placed the relevant Order). For returned items, we may require photographic evidence, prior to any decision being made.

- 12.3 Returns of stock Goods will only be accepted:
- 12.3.1 by prior arrangement (confirmed by Us in writing) within (i) 6 months in respect of any Ventilation Products, (ii) 8 weeks in respect of any other Goods, or (iii) such longer period as We may agree on a case by case basis, in each case (i) – (iii) calculated with effect from the date of delivery of the relevant Goods as determined in accordance with clause 5.2;
  - 12.3.2 on payment of the charges detailed in clause 12.5 (unless the Goods were defective when delivered); and
  - 12.3.3 where the Goods are as fit for sale on their return as they were on delivery.
- 12.4 Where We accept the return of Goods from You, We will issue You with a credit note to the value of the relevant Goods, subject to any deductions We may make in respect of the charges described in clause 12.5.
- 12.5 Where You return any Goods to Us in circumstances other than those described in clause 12.1 and:
- 12.5.1 Providing the item is in its original packaging, unopened and in resalable condition, within the timescales for return and we have approved once viewing the images, we can accept this item as a return.
  - 12.5.2 You do not order any replacement goods from Us at the same time as making the relevant return, we will charge You a restocking fee of 25%;
  - 12.5.3 You do order replacement goods from Us at the same time as making the relevant return, the restocking fee will be the lesser of £40 per item or 25% of the price paid for the relevant Goods
- 12.6 You agree that We may deduct any sums due from You under this clause 12 from any credit note that We may issue for the relevant Goods.
- 12.7 If You install the relevant Goods You will be deemed to accept that the model, colour and finish correspond with the model, colour and finish stated in the Order and such Goods will not be returnable or refundable for failure to comply with such attributes. This does not affect the rights provided to You under clause 9.

### **13 Export terms**

- 13.1 Where the Goods are supplied by Us to You by way of export from the United Kingdom this clause 13 of these terms applies (except to the extent that it is inconsistent with any other written agreement between Us).
- 13.2 The 'Incoterms' of the International Chamber of Commerce which are in force at the time when the Contract comes into effect apply to exports, but the terms of this Contract prevail to the extent that there is any inconsistency.
- 13.3 Unless otherwise agreed, the Goods are supplied ex works Our place of manufacture.
- 13.4 Where the Goods are to be sent by Us to You by a route involving sea transport We are under no obligation to give a notice under section 32(3) of the Sale of Goods Act 1979.
- 13.5 If Your place of business or habitual residence is in a different State (within the meaning of s.26 (3) (b) Unfair Contract Terms Act 1977) to Us, neither We nor any member of Our Group shall be liable for death or personal injury arising from the use of any Goods delivered in the territory of another State.

### **14 Cancellation & Variation of Orders**

- 14.1 Subject to clause 3.2, You may not vary and / or cancel an Order which has been accepted by Us unless We agree in writing (and clauses 3.2.2 and 14.3 then apply).
- 14.2 Orders for non-stock items (as identified as such in Our brochure for the relevant brand which was in circulation at the date You placed the relevant Order) which We have accepted cannot be varied and / or cancelled once manufacturing has begun or special materials and/or equipment has been ordered by Us.
- 14.3 If an Order is varied and / or cancelled by You (for any reason) after We have accepted it, You shall pay Us for all stock (finished or unfinished) that We may then hold (or to which We are committed) for the Order.
- 14.4 We may suspend or cancel the Contract, by written notice if:
- 14.4.1 You fail to pay Us any money when due (whether under the Contract or otherwise);
  - 14.4.2 being a company, You become insolvent (as determined by Us in accordance with clause 19.4), call any meeting of Your creditors, or appoint a receiver or administrator;

- 14.4.3 being an individual, You die or become bankrupt or enter into a voluntary arrangement;
  - 14.4.4 You compound or negotiate for any composition with Your creditors; or
  - 14.4.5 You fail to honour Your obligations under these terms.
- 14.5 If We decide to cancel the Contract We may repossess any Goods in respect of which title has not passed to You in accordance with clause 5 and We may also demand immediate payment of any sums due to Us by You under this or any other contract You have with Us. We may also repossess any Deliverables.
- 14.6 Our right to suspend or cancel a Contract is without prejudice to any other rights We may have.

## **15 Intellectual Property Rights**

- 15.1 In relation to the Deliverables:
- 15.1.1 We shall retain ownership of all patents, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world ("**Intellectual Property Rights**") in the Deliverables;
  - 15.1.2 We grant You a fully paid-up, worldwide, royalty-free and non-exclusive license during this agreement to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in Your business, including, for the installation of the Goods;
  - 15.1.3 The license granted in clause 15.1.2 only includes the right for You to use the Deliverables for internal business purposes and You may not commercially exploit the Deliverables;
  - 15.1.4 You may not sub-license, assign or otherwise transfer the rights granted in clause 15.1.2; and
  - 15.1.5 We shall not be liable for any use by You of any of the Deliverables for any purpose other than that for which they were prepared.

## **16 Waiver and variations**

- 16.1 Any waiver or variation of these terms shall not bind Us unless it is:
- 16.1.1 made (or recorded) in writing;
  - 16.1.2 signed on behalf of each party; and
  - 16.1.3 expressly stating an intention to vary these terms.
- 16.2 By submitting an Order to Us, You are expressly waiving any terms You may use (including without limitation any terms contained in and / or referred to in any Order) and / or which may otherwise be implied by trade, custom, practice or course of dealing and, You agree that, the terms of the Contract take precedence over any other terms, communications and negotiations between You and Us.

## **17 Health and Safety at Work**

- 17.1 You shall abide by any health and safety instructions We issue to You in respect of the Goods and / or their installation (copies are available on request).

## **18 Force majeure**

- 18.1 If We are unable to perform Our obligations to You (or We are only able to perform them at unreasonable cost) because of circumstances beyond Our control, We may cancel or suspend any of Our obligations to You, without liability.
- 18.2 Examples of those circumstances include a n act of God, accident, explosion, war, terrorism, fire, flood, pandemics (Such as but not limited to COVID 19), transport delays, strikes and other industrial disputes and difficulty in obtaining supplies.

## 19 General

- 19.1 English law is applicable to any contract made under these terms. The English courts have exclusive jurisdiction.
- 19.2 If You are more than one person, each of You has joint and several obligations under these terms. A 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 19.3 If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms.
- 19.4 We may treat You as insolvent if:
- 19.4.1 You are unable to pay Your debts as they fall due; or
- 19.4.2 You (or any item of Your property) become the subject of:
- 19.4.2.1 any formal insolvency procedure (examples of which include receivership, liquidation, administration, voluntary arrangements (for example a moratorium) or bankruptcy);
- 19.4.2.2 any application or proposal for any formal insolvency procedure; or
- 19.4.2.3 any application, procedure or proposal overseas with similar effect or purpose.
- 19.5 Save as expressly stated in clause 9.1.2, all information contained on and / or in (as appropriate):
- 19.5.1 brochures;
- 19.5.2 catalogues;
- 19.5.3 Our memory sticks;
- 19.5.4 Our websites;
- 19.5.5 any other website which displays Our products and / or offers Our products for sale; and
- 19.5.6 any other promotional materials
- is to be treated as illustrative only and is produced for the sole purpose of giving an approximate idea of the Goods described in it. Such information forms no part of any contract between Us and You should not rely on it in entering into any contract with Us.
- 19.6 Any typographical, clerical or other error or omission in any literature, quotation, price list, or other document or correspondence issued by Us will be subject to correction without liability being incurred by Us.
- 19.7 Any notice to be given under the Contract by either Us or You shall be in writing and shall be served by sending it by recorded delivery or by first class post to the other's registered office address (for incorporated persons) or principal place of business (for all other persons), or by leaving such notice at such address. A notice served in accordance with this clause 19.7 shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause 19.7 or if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Working Day after posting. This clause does not apply to the service of any proceedings or other documents in any legal action. A notice given under this agreement is not valid if sent by email.
- 19.8 Except for clauses 3.1, 10.1– 10.6, 11.1.3, 11.2, 11.6, 6.2, 13.5 and this clause 19.8 which are made for the benefit of and shall be enforceable by each member of Our Group, a person other than Us and You shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.
- 19.9 The Contract constitutes the entire agreement between Us and You. In the event of any conflict, ambiguity or inconsistency between the components of the Contract, the components shall prevail in the following order of precedence: any written statements of the type referred to in clause 9.1.6, the Order Confirmation (if any), these terms and conditions, the aspects of the Order incorporated in to this Contract by reference under clause **Error! Reference source not found.** The only statements, promises, representations, warranties, conditions and assurances upon which You may rely in relation to the Goods are those contained in the Contract.
- 19.10 You shall not, without Our prior written consent assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of Your rights or obligations under the Contract.
- 19.11 If You are a business and You purchase Goods with the intention of reselling those Goods to an end-user customer and You wish or intend to use any of Our images of the Goods for any purpose (including the marketing or promotion of the Goods) then You shall only be entitled to access Our images from Our online portal (the access point for which will be notified to You on request) and You will be required to accept such further terms as are required by Us in respect of the use of any such images.

## **20 Privacy Clause**

Zehnder and its Group companies comply at all times with the relevant data protection provisions. Within the scope of the respective contract, Zehnder is entitled to collect, process, use and disclose the data of the employees, managing directors and other employees of the contractual partner for all purposes connected with the performance of the contract as well as for marketing purposes. Moreover, Zehnder is expressly authorized to process data about the customer in any form and to disclose it to Group companies or third parties abroad. These recipients may also be located in countries without an equivalent level of data protection. The contracting party expressly agrees to the transfer of data to these countries. In these cases, data protection with the Group companies or third parties is ensured by contractual standard data protection clauses in accordance with Art. 46 para. 2 lit. c of the EU-General Data Protection Regulation.

## **21. Business Ethics**

We adopt an ethical code called "Zehnder Group Code of Conduct" which is available on the website <https://www.zehndergroup.com/en/investor-relations/corporate-governance>. Therefore, the Contractual Partner doing business with us is bound to review it, adhere to business principles consistent with our own and to uphold and respect the highest ethical standards. Any violation of our policies will be considered a serious breach of contract and could result in appropriate actions including a claim for damages, contract termination for default.