

**ROSENBERG FANS CANADA LTD**

**Tel: 905.565.1038 Fax: 905.565.0161**

TERMS & CONDITIONS OF SALE

**DEFINITIONS:**

For purposes hereof: (i) **“Company”** means Rosenberg Fans Canada Ltd., a Canadian Corporation; (ii) **“Buyer”** means the individual or entity whose name appears on the face of the Order Acknowledgement; (iii) **“Terms and Conditions of Sale”** means the following terms and conditions of sale which are hereby incorporated by reference in, and made part of, the Order Acknowledgment to which these Terms and Conditions of Sale are attached; (iv) **“Equipment”** means the parts and other equipment described on the face of the Order Acknowledgment; (v) **“Order Acknowledgment”** means the written document issued by the Company to the Customer that is styled as an “order acknowledgment”; (vi) **“Manufacturer”** means the manufacturer of the Equipment to include **Rosenberg GmbH, Ecofit s. a.** and **Ducati Energia s.p.a.**; and (vii) **“Agreement”** means these Terms and Conditions of Sale and the Order Acknowledgement.

**QUOTATIONS:**

Quotations are valid for (90) days from date of issue. Unless stated otherwise, prices and deliveries are FOB the Company Warehouse. Pricing does not include any taxes with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any Equipment. Any such taxes shall be borne exclusively by the Buyer. Equipment specifications are subject to change without notice.

**PAYMENT TERMS:**

Unless otherwise specified in Company’s quotation, payment shall be due Net 30 days from date of invoice, without regard to date of delivery of Equipment. An interest charge equal to 1.5% per month compounded monthly will be added to overdue invoices. The Buyer relinquishes any right to set off amounts charged by and between the parties. Further, Warranty or other Service Claims do not suspend the payment obligations of the Buyer. Payment shall be by cheque, letter of credit, cash in advance, C.O.D., wire transfer, or other credit terms, as determined by the Company’s credit department from time to time. In the event of any failure by Buyer to make any payment due the Company, Buyer will be responsible for all reasonable expenses (including legal fees) incurred by the Company in collecting such amounts.

**BUYER’S PURCHASE ORDER:**

The Buyer’s purchase order shall be deemed to incorporate, without exemption, all of the terms and conditions of the quotation.

#### **TITLE:**

Title to Equipment supplied passes to Buyer at time of shipment, regardless of responsibility for freight charges (prepaid, collect, etc.). Accordingly, the responsibility for filing claims for loss or damage incurred during transit is the exclusive responsibility of the Buyer. Equipment to be delivered by the Company hereunder are at the risk of the Buyer from the moment the Equipment is delivered to the carrier for transport. Loading, dispatch or transport, unloading and insurance of the Equipment to be delivered shall take place at the risk of the Buyer. All Equipment delivered by the Company shall remain the property thereof until such time as the Buyer has paid in full all that which is owed to the Company at such time, including damages, costs and interest. The Buyer shall accept delivery at the time at which the Equipment to be delivered is ready for transport or dispatch. If the Buyer does not cooperate in a timely fashion or at the agreed upon time in acceptance of delivery, the Equipment will be deemed to be delivered at the time that acceptance could have been expected by the Company. The Company is entitled to compensation from the Buyer for damage and costs which are the consequences of refusal of or delay in the acceptance.

#### **NONCONFORMITY:**

Within ten (10) days after delivery of the Equipment, the Buyer must give detailed written notice to the Company of any claim by it based upon the condition, quantity or grade of the Equipment sold or of any claimed nonconformity with the Order Acknowledgement or Buyer's specifications (a "NonConformity"). If the Buyer fails to deliver such notice within the ten (10) day period mentioned above, the Buyer will be deemed to accept the Equipment and to have waived any right to make a claim for a Non-Conformity.

#### **LIMITATIONS OF LIABILITY**

The Company shall not be liable, under any circumstances, for any special, indirect, exemplary, consequential or coincidental damages of any kind whatsoever, whether arising out of the use, failure of, defects in condition of, delay in delivery, non-delivery or otherwise of the Equipment or the Agreement whether in contract, tort or otherwise, arising from or relating to this agreement even if such party has been notified of the possibility of such damages. Buyer assumes all risk and responsibility for the use of Equipment and for the results obtained by any such use, and agrees to indemnify and hold the Company, its affiliates, and its and their officers, directors, employees, agents, and shareholders, and its and their respective assigns, heirs, legal representatives and successors harmless from any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable legal and accounting fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) arising out of the use by the Buyer, or by any subsequent purchaser from the Buyer, of the Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE COMPANY'S LIABILITY FOR DIRECT DAMAGES SHALL NOT EXCEED, EITHER IN RESPECT OF AN INDIVIDUAL CLAIM OR IN THE AGGREGATE FOR ALL CLAIMS HEREUNDER, AN AMOUNT EQUAL TO THE PURCHASE PRICE OF THE PARTICULAR EQUIPMENT IN RESPECT OF WHICH DAMAGES ARE CLAIMED BY THE BUYER.

### **WARRANTY:**

Any and all warranties with respect to the Equipment are provided solely by the applicable manufacturer of such Equipment, the terms and conditions of which (as modified or amended from time to time in such manufacturer's sole discretion without notice) appear at the following websites:

For Equipment manufactured by Rosenberg:

<http://www.rosenberg-gmbh.com/english/index.htm>

For Equipment manufactured by Ecofit:

<http://www.ecofit.com/site/distribution/conditions/index.html>

For Equipment manufactured by Ducati:

[http://www.ducatienergia.it/staging/products\\_condensatorie.html](http://www.ducatienergia.it/staging/products_condensatorie.html)

Company makes no direct warranty with respect to the Equipment, all warranty obligations being exclusively that of the applicable Equipment manufacturer. For Equipment which the Company procures from third parties, the guarantee obligations of the Company toward the Buyer are never greater or of longer duration than the guarantee obligations of those applicable manufacturers toward the Company. The Company will be discharged with respect thereto when it transfers its claim on the third party to the Buyer. Buyer's exclusive remedy for any failure of Equipment covered by the limited warranty hereunder shall be, at the Company's sole option, repair by the Company (F.O.B. Mississauga warehouse) or replacement of the defective Equipment.

Unless otherwise stated, the warranty period for Rosenberg AC and EC Fan Motors shall be two (2) years from date of shipment. Notwithstanding the foregoing, Ecofit AC and EC Fan Motors shall have a warranty period of one (1) year from date of shipment. This limited warranty shall not apply to any Equipment which the Company determines: (i) has been abused, damaged by external causes, or altered or misused; (ii) has been damaged due to improper installation or use; or (iii) has had its warranty seal broken, indicating an unauthorized repair has been attempted by anyone other than the Company.

Buyer shall be responsible for all costs associated with the delivery of the Equipment for warranty repair to the Company or its designated agent for such purpose. Any warranty obligation is suspended during such time as Buyer is in full or partial breach or default of the Agreement.

COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF EQUIPMENT TO DISTRIBUTOR OR TO ANY OTHER PERSON, EXCEPT AS SET FORTH IN LIMITED WARRANTY SET FORTH ABOVE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT, ARE HEREBY EXCLUDED BY THE COMPANY.

**ORDER ACCEPTANCE:**

All purchase orders are subject to acceptance in writing by Company's management and credit approval. The Company shall not be obligated to deliver any Equipment to Buyer if Buyer is in default in the payment for any Equipment previously ordered or if an order is in excess of the Buyer's credit limit authorized by the Company. Nothing herein shall obligate Company to extend Buyer any credit, and any credit which has been authorized may be modified or cancelled at any time in the sole discretion of the Company.

**CANCELLATIONS, CHANGES, ALTERATIONS:**

Buyer may modify an Order Acknowledgement which has been accepted by Company provided that the underlying Equipment has not already been delivered by Company to Buyer and Buyer reimburses Company for all costs incurred thereby as a result of any such modification.

**SHIPPING AND DELIVERY:**

Company will attempt to meet the shipment date provided on the order confirmation, but does not guarantee to do so.

**RETURN GOODS POLICY:**

1. Notwithstanding anything herein to the contrary, special orders, non-stock and obsolete Equipment are not returnable under any circumstances.
2. Collect shipments of returned Equipment will not be accepted, unless authorized by the Company.
3. Equipment returned without a return goods authorization (RGA) number will not be accepted.
4. At its sole discretion, Company may issue a RGA number after receiving a completed Request for RGA Form for Equipment under warranty, provided by the Company.
5. Returned Equipment is subject to a restocking charge that is in effect from time to time payable by the Borrower to cover the cost of processing, inspection and repackaging.
6. All Equipment assigned a RGA number must be properly packaged and shipped via the carrier designated by the Company.
7. RGA number must be clearly visible of the outside of packaging.

#### **FORCE MAJEURE:**

If the performance by either party of any obligation under the Agreement is prevented, restricted, or interfered with, by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, telecommunication services, equipment or software from suppliers, war or other violence; any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the performing party, that party will be excused from such performance to the extent of such prevention, restriction or interference.

#### **NOTICES:**

Any notice which may be or is required to be given under the Agreement shall be in writing. All written notices shall be sent by registered or certified mail, postage prepaid, return receipt requested, personal delivery, air freight (notice of receipt of which is required) or by facsimile transmission (followed by a confirmation notice utilizing any of such other means within five (5) business days (in the Province of Ontario) thereafter). All such notices shall be deemed to have been given when received, addressed as indicated in the Order Acknowledgement to such other address with respect to which the receiving party may from time to time give notice to the other party.

#### **CONFIDENTIALITY:**

Buyer and Company acknowledge that, in the course of performing their obligations under the Agreement, they may obtain information relating to the other party and its business, data, processes, technology, software, products, including the Equipment, or services, which is of a confidential and propriety nature ("**Proprietary Information**"). Such Proprietary Information includes, without limitation, trade secrets, know-how, formulas, compositions of matter, inventions, techniques, processes, programs, diagrams, schematics, customer and financial information and sales and marketing plans and other information or data respecting customers, products, or prices. Each party will (a) use such Proprietary Information only in connection with fulfilling its obligations under the Agreement, (b) during the term of the Agreement and for a period of three (3) years thereafter, hold such Proprietary Information in strict confidence and exercise due care with respect to its handling and protection, consistent with its own policies concerning protection of its own proprietary and/or trade secret information, and (c) disclose, divulge or publish the same only to such of its employees or representatives as are Qualified Personnel (as below) and to no other person or entity, except as required by law or pursuant to a legal or governmental proceeding. As used herein, the term "**Qualified Personnel**" means such employees and representatives of Buyer who (y) have a need to know or have access to the Proprietary Information in order for them to carry out the purposes of the Agreement, and (z) have executed non-disclosure agreements (with terms at least as restrictive as those contained herein) binding them not to use or disclose such Proprietary Information except as permitted herein. The provisions of this Section will not apply to any information which: (a) is at the time of its disclosure generally available to the public; (b) becomes generally available to the public through no fault of the receiving party; (c) is, prior to its initial disclosure, in the possession of the receiving party; (d) is independently developed by a party without use of or reference to any of the other

party's Proprietary Information; or (e) is acquired by the receiving party from any third party reasonably considered as having a right to disclose it; or (f) is required to be disclosed by applicable law, statute, rule, regulation, court order, subpoena, or similar demand, or applicable regulatory authorities, but in such event only to the extent required to be disclosed and after due notice is given to the other party, unless such notice is not practicable or is prohibited by law. Upon the written request of the disclosing party or, in any event, on the termination of the Agreement, the receiving party shall return all originals and copies of (and other media embodying) Proprietary Information received from the disclosing party within ten (10) business days of the receipt of such request or the termination date, as applicable.

#### **MISCELLANEOUS:**

The Agreement shall ensure to each party's respective successors and permitted assigns. Buyer shall not assign the Agreement without the prior written consent of the Company. The Agreement constitute the entire agreement and understanding between the parties regarding the subject matter of the Agreement, and supersede all prior agreements, understandings, documents and statements regarding such subject matter, and there are no inconsistent understandings or agreements other than those set out in the Agreement. Any term or provision of the Agreement that is invalid or unenforceable in any situation or in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. The Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of the Agreement, including signature pages hereto, shall be deemed to be an original. The Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Company and Buyer are independent contractors and will have no power, nor will either party represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. The Agreement will not be construed as constituting the Company and the Buyer as partners, joint venturers or agents or to create any other form of legal association that would impose liability upon one party for the act or failure to act of the other party. In the event of any conflict between the terms of an Order Acknowledgement and the terms of these Terms and Conditions, the terms of these Terms and Conditions shall prevail except as may be superseded by express language in an Order Acknowledgement. Buyer understands and agrees that all of the Company's intellectual property rights in the Equipment ("**Company IP**") shall remain the exclusive property of the Company and no rights to the Company IP shall vest in the Buyer because of the Agreement.