

Terms and Conditions of sale and delivery

1 DEFINITIONS

In this document, the following words shall have the following meanings:

- 1.1 "Buyer" means the organization or person who buys Goods from the Seller;
- 1.2 "Goods" means the articles to be supplied to the Buyer the Seller;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Seller" means OXYCOM FRESH AIR BV, with registered office in Kaagstraat 31, NL-8102 GZ Raalte
- 1.5 "Terms and Conditions" refer to this document

2 GENERAL

- 2.1 These Terms and Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

3 PRICE AND PAYMENT

- 3.1 The Price shall be the price quoted on the Seller's confirmation of order. The Price is exclusive of VAT, which shall be due at the rate in force on the date of the Seller's invoice.
- 3.2 Prices are ex works, if not agreed otherwise. Costs of delivery by a carrier chosen by OXYCOM, including packaging, will be paid by the buyer.
- 3.3 Payment of the price and VAT and any other applicable costs shall be due within 30 days of the date of receipt of the invoice supplied by the Seller.
- 3.4 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of the Dutch Central Bank.
- 3.5 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by the Seller.
- 3.6 If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - 3.6.1 Require payment in advance of delivery in relation to any Goods not previously delivered;
 - 3.6.2 Refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
 - 3.6.3 Terminate the contract.

4 GOODS

The quantity and description of the Goods shall be as set out in the Seller's confirmation of order.

5 SAMPLE

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

6 DELIVERY

6.1 Delivery of the Goods shall be made to the address specified by the Buyer on the date specified by the Seller. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Seller for delivery.

6.2 The Seller undertakes to use its reasonable endeavors to dispatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be of the essence of the contract.

6.3 The Seller shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of the Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.

6.4 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for dispatch, the Seller shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.

7 ACCEPTANCE OF THE GOODS

7.1 The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.

7.2 The Buyer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall give written notification to the Seller within 5 working days of delivery of the Goods of any defects, which a reasonable examination would have revealed.

7.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

8 RISK

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller's premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

9 TITLE

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

10 WARRANTY

10.1 Where the Goods have been manufactured by the Seller and are found to be defective at Acceptance of Goods, the Seller shall repair, or in its sole discretion, replace defective Goods free of charge, subject to the following conditions:

10.1.1 The Buyer notifying the Seller in writing immediately upon the defect becoming apparent;

10.1.2 The defect being due to the faulty design, materials or workmanship of the Seller.

10.2 Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.

10.3 Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.

10.4 The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.

10.5 The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 11 and 12 below.

11 LIABILITY

11.1 No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:

11.1.1 The correspondence of the Goods with any description;

11.1.2 The quality of the Goods; or

11.1.3 The fitness of the Goods for any purpose whatsoever.

11.2 No liability of any nature shall be accepted by the Seller to the Buyer in respect of any express term of this contract where such term relates in any way to:

11.2.1 The correspondence of the Goods with any description;

11.2.2 The quality of the Goods; or

11.2.3 The fitness of the Goods for any purpose whatsoever.

11.3 All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Seller or not) are hereby excluded from the contract.

12 LIMITATION OF LIABILITY

12.1 Where any court or arbitrator determines that any part of Clause 11 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.

12.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

13 INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

14 FORCE MAJEURE

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

15 RELATIONSHIP OF PARTIES

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

16 ASSIGNMENT AND SUB-CONTRACTING

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

17 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

18 SEVERABILITY

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

19 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of The Netherlands and the parties hereby submit to the exclusive jurisdiction of the Dutch courts.