

Conditions of sale of goods and/or services

Sodeca Fans UK LTD

GENERAL

SODECA and the Customer have agreed that SODECA shall provide the Goods and/or Services (as defined below) in accordance with these terms and conditions. Whereby it is agreed as follows:-

1. INTERPRETATION

1.1. Definitions.

In these Conditions, the following definitions apply:

SODECA: means Sodeca Fans UK Limited, Tamworth Enterprise Centre, Philip Dix House, Corporation Street, Tamworth, B79 7DN.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 0.

Contract: any contract between SODECA and the Customer for the supply of Goods and/or Services made in accordance with these Conditions.

Customer: the individual, firm, company or other party from whom an Order is received by SODECA.

Force Majeure Event: has the meaning given in clause 12.

Goods: the goods (or any part of them) set out in the Order acknowledgment issued by SODECA or failing an acknowledgement being sent as otherwise agreed as being the Goods by the parties.

Order: the Customer's order for the Goods and/or Services.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related 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 application 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.

Services: the services, supplied by the SODECA or its selected sub-contractor to the Customer as set out in the Service Specification below.

Specification: the description or specification for the Goods and/or Services provided by SODECA to the Customer in the order acknowledgement or absent of a description as otherwise agreed by the parties.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract (and to any sales of Goods and/or Services from SODECA to the Customer) to the exclusion of any other conflicting terms and/or standard terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when SODECA issues an acknowledgment of the Order at which point the Contract shall come into existence.

2.4 The Customer is deemed to acknowledge that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of SODECA.

2.5 Any descriptive matter, or advertising produced by SODECA and any descriptions or illustrations contained in SODECA catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 Any quotation given by SODECA shall not constitute an offer. A quotation shall only be valid for a period of 7 Business Days from its date of issue.

3. GOODS

3.1 SODECA reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements.

3.2 If the quoted price includes carriage, point of delivery will be deemed to take place at the point of entry to the Customer's works or site specified in the Contract. Unless otherwise stated, SODECA will not be responsible for offloading. The method of carriage shall be selected by SODECA at its discretion.

3.3 If the quoted price for the Goods does not include carriage, point of delivery will take place when the goods are loaded onto the Customer's selected transport.

3.4 All returnable containers, pallets and frames will be invoiced and must be paid for by the Customer at the time of payment for the Goods or otherwise as agreed

in writing between SODECA and the Customer. When returned, carriage paid, in good condition to SODECA's works, full credit for these charged and returnable containers, pallets and frames will be made. This shall not apply to deliveries to overseas destinations.

3.5 Notwithstanding that property in the Goods shall not pass until payment, all Goods shall be at the risk of the Customer from the point of delivery.

3.6 Where the quoted price includes carriage, SODECA shall not be liable for loss or damage in transit unless the notice of such loss or damage is given to the carriers and to SODECA verbally within 24 hours and in writing within 5 days of point of delivery.

3.7 SODECA is prepared to arrange specific types of carriage at the request and cost of the Customer as agent of the Customer only and without liability or obligation on the part of SODECA.

3.8 If through instructions or lack of instructions from the Customer, SODECA is unable to despatch the Goods within seven days after the date of notification that they are ready for despatch, the Goods will be deemed to have been delivered and SODECA shall be entitled to arrange insurance and storage within its own works or elsewhere on behalf of the Customer and the Customer will pay SODECA reasonable charges incurred for such insurance or storage. The Goods shall be invoiced and the customer must pay within the normal agreed terms of payment.

3.9 SODECA is not responsible for export demurrage charges and/or customs charges (if applicable) or any other additional costs resulting from delay in unloading.

3.10 Any dates quoted for delivery of Goods are estimates and approximate only. No warranty is given for the specific time of delivery. Time of delivery is not of the essence. SODECA shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide SODECA with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or in any

event any delay which is less than 4 months from the original estimated time of delivery.

3.11 If SODECA fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

3.12 The Customer shall not be entitled to reject the Goods if SODECA delivers up to and including 10% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered (or otherwise when the matter is discovered and verified.)

3.13 SODECA may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. WARRANTY OF GOODS MANUFACTURED BY SODECA

4.1 SODECA warrants that on the point of delivery, the Goods shall conform in all material respects with their description and any applicable Specification.

4.2 Subject to clause 4.3, if:

- (a) the Customer gives notice in writing to SODECA that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
- (b) SODECA is given a reasonable opportunity of examining such Goods;

SODECA shall, at its option, replace the defective Goods, or refund the price of the defective Goods.

4.3 SODECA shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

- (a) the Customer, and/or end user makes any use of such defective Goods after giving notice in accordance with clause 4.2 or otherwise realising that there is a defect;
- (b) the Customer, and/or end user and/or installer fails to follow SODECA's oral or written instructions as to the storage, use and/or maintenance of the Goods and/or good practice regarding the same; and in particular but without limitation if the Customer fails to follow the guidance given on the labelling to the Goods;
- (c) the Customer and/or end user and/or installer alters or repairs the Goods; or
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal use, storage or working conditions.
- (e) the Customer fails to follow any direction, instruction, advice or similar set out in the installation manual(s).

4.4 Save as provided in these Conditions, SODECA shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 In respect of the supply of Goods, save for such terms as are implied by Section 12 of the Sale of Goods Act 1979 (as amended from time to time) all other implied terms are expressly excluded from the Contract.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer from the point of delivery.

5.2 Title to the Goods shall not pass to the Customer until:

- (a) SODECA receives payment in full (in cash or cleared funds) for the Goods and any other goods that SODECA has supplied to the Customer;

tomers in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; unless

- (b) (in circumstances where the Customer is a mercantile agent and it resells the Goods in the normal course of trade); in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as SODECA property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify SODECA immediately if it becomes subject to any of the events listed in clause 9.2; and
- (e) give SODECA such information relating to the Goods as SODECA may require from time to time.

5.4 Subject to clause 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before SODECA receives payment for the Goods (as principal and not as SODECA's agent) in which event title to the Goods shall pass to the Customer immediately before the time of resale. However, if the Customer resells the Goods before SODECA receives payment for them the Customer will hold on trust for SODECA so much of the proceeds of sale received by it, under contracts which include any of the Goods hereby sold either in their original or altered state, as are necessary to discharge payment in full to SODECA.

5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy SODECA may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) SODECA may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

5.6 Where the Goods are supplied with a manufacturer's warranty the Customer agrees that in addition to the limitations contained within such manufacturer's warranty any such warranty will be invalid if any faults or defects are caused by accidental damage, wilful damage, abnormal working conditions, failure to follow instructions, misuse, alteration or repair, natural phenomenon or improper maintenance to the Goods.

6. SUPPLY OF SERVICES

6.1 SODECA shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

6.2 Any performance dates specified by SODECA for delivery or completion of the Services shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 SODECA shall have the right to make any changes to the Services 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, and SODECA shall notify the Customer in any such event.

6.4 SODECA warrants that the Services will correspond with their description. All implied terms pertaining to the skill and care with which the services are provided are expressly excluded.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) ensure that the terms of the Order and the Goods Specification and/or Service Specification are complete and accurate;
- (b) co-operate with SODECA in all matters relating to the Services;
- (c) provide SODECA with such information as SODECA may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

7.2 If SODECA's performance of any of its obligations in respect of the Services or the Goods is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) SODECA shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or further delivery of the Goods until the Customer remedies the Customer Default, and SODECA shall be relieved from the performance of any of its obligations to the extent the Customer Default prevents, delays or excuses SODECA's performance of any of its obligations;

- (b) SODECA shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SODECA's failure or delay to perform any of its obligations caused directly or indirectly by a Customer Default; and

- (c) the Customer shall reimburse SODECA on written demand for any costs or losses sustained or incurred by SODECA arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price of the Goods shall be the price set out in the order acknowledgment or if none is stated the price as agreed between the parties or, if no price is agreed, the price set out in SODECA's price list in force as at the date of delivery.

8.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

8.3 The charges for Services shall be as set out in the order acknowledgment or if none is stated the price quoted by SODECA. In the absence of SODECA providing a quote or the parties otherwise agreeing the price SODECA shall be entitled to charge a fair sum having regard to all the circumstances as if agreement had been reached between a willing buyer and seller.

- (a) If extra works are required over and above that estimated by SODECA when quoting for the Services for any reason other than which is SODECA's sole responsibility then SODECA shall be entitled to charge additional sums to that quoted on a Pro Rata basis. Similarly if the works take longer than was anticipated by SODECA or are delayed for any reason other than which is SODECA's sole responsibility SODECA may charge additional sums on a Pro-Rata basis.
- (b) SODECA shall be entitled to charge the Customer for any expenses reasonably incurred by the

individuals whom SODECA engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by SODECA for the performance of the Services, and for the cost of any materials.

8.4 SODECA reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to SODECA that is due to:
 - (i) any factor beyond the control of SODECA (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give SODECA adequate or accurate information or instructions in respect of the Goods.

8.5 SODECA shall invoice the Customer on or at any time after completion of delivery.

8.6 The Customer shall pay each invoice submitted by SODECA:

- (a) Unless otherwise agreed within 30 days of despatch;
- (b) in full and in cleared funds to a bank account nominated in writing by SODECA;

and time for payment shall be of the essence of the Contract.

8.7 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from SODECA, pay to SODECA such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

8.8 If the Customer fails to make any payment due to SODECA under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank Of England's 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). SODECA may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by SODECA to the Customer.

8.10 SODECA may offer the Customer credit, subject to satisfactory credit checks of the Customer by SODECA. Such credit shall be at the sole discretion of SODECA and may be withdrawn by SODECA at any time.

9. TERMINATION AND SUSPENSION

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, SODECA may terminate the Contract with immediate effect by giving written notice to the Customer.

9.2 For the purposes of clause 9.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited li-

- ability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to re-scheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in SODECA's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3** Without limiting its other rights or remedies, SODECA may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and SODECA if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(l), or SODECA reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due to SODECA on the due date for payment. SODECA shall have no liability to the Customer for suspension properly exercised under this clause.

9.4 On termination of the Contract for any reason the Customer shall immediately pay to SODECA all of SODECA's outstanding unpaid invoices and interest.

9.5 Termination of the Contract, however arising, shall not affect either of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude SODECA liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for SODECA to exclude or restrict liability.

10.2 Subject to clause 10.1 SODECA shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:

- (a) any loss of profit; or
- (b) loss of business, depletion of goodwill and/or similar losses; or
- (c) loss of anticipated savings; or

(d) loss of goods; or

(e) loss of contract; or

(f) loss of use; or

(g) loss or corruption of data or information; or

(h) any loss of government grant or similar financial allocation; or

(i) any loss of trust status or similar; or

(j) any special loss;

(k) any indirect loss;

(l) any consequential loss; or

(m) any pure economic loss, costs, damages, charges or expenses.

10.3 SODECA's total liability to the Customer in respect of all claims arising under or in connection with the Contract shall be limited to the price originally agreed for the Goods and/or Services which are the subject of any successful claim.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Unless otherwise agreed between the parties, all Intellectual Property Rights in and to the Goods and Services (including any report, information or other deliverables produced as a result of those Services) belong, and shall belong, to SODECA and/or its licensors.

11.2 The Customer shall, at the expense of the Company, take all such steps as the Company may reasonably require to assist the Company in maintaining the validity and enforceability of the Intellectual Property Rights of the Company and/or its licensor.

11.3 The Customer shall not do or authorise any third party to do any act which would or might invalidate or

be inconsistent with any Intellectual Property Rights of SODECA and shall not omit or authorise any third party to omit to do any act which, by its omission, would have that effect or character.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, a latent defect in a component or product not revealed by any testing prior to manufacture or delivery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of SODECA's or subcontractors or SODECAs.

13. GENERAL

13.1 Assignment and other dealings.

- (a) SODECA may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of SODECA.

13.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier. In the case of a notice given by email the notice shall be sent to the email address notified in writing by the other party.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if sent by email at the time of transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Severance.

- (a) If any provision or part-provision of the Contract 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 the Contract.

(b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.8 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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13.4 Waiver.

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 Third party rights.

A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.6 Variation.

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by SODECA.

13.7 Governing law.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.