

## TERMS AND CONDITIONS OF SALE

Gibbons Fans Ltd, Suite 1, 3<sup>rd</sup> Floor, 11-12 St. James's Square, London SW1Y 4LB

### 1. Interpretation

**“Business”** means a person or firm who purchases Products from the Company in the course of a business;

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in England when banks are open for business;

**“Customer”** means the Consumer or Business for whom the Company has agreed to provide the Products in accordance with these Terms;

**“Company”** means Gibbons Fans Limited a company registered in England and Wales (company number 09855113) whose registered office is at Suite 1, 3<sup>rd</sup> Floor, 11-12 St. James's Square, London SW1Y 4LB. Also referred to as us, we or our;

**“Consumer”** means a person who is not acting in the course of a business;

**“Contract”** means the contract for the provision of the Products;

**“Products”** means the fan(s) and/or other products to be provided by the Company to the Customer under the contract for the supply of goods. Product shall be construed accordingly;

**“Incoterms”** means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made.

.1 These terms and conditions (the 'Terms') apply to both Businesses and Consumers. Where specified the terms only apply to either Businesses or Consumers. Please make sure you read the clauses that are relevant to your order.

.2 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

.3 A reference to a party includes its personal representatives, successors or permitted assigns.

#### Information about the Company

.1 The Company operates the website [www.gibbonsfans.com](http://www.gibbonsfans.com) (the 'Site'). The Company's main trading address is Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex. CO1 2ZF, UK. The Company's value added tax ('VAT') number is 229502416.

.2 Contacting the Company if you are a Consumer:

2.2.1 To cancel a Contract in accordance with your legal right to do so as set out in clause 8, you need to let the Company know that you have decided to cancel. The easiest way to do this is to complete the cancellation form on our Site. A link to our cancellation form will be included in our email confirming your order. If you use this method we will e-mail you to confirm we have received your cancellation. You can also e-mail us at [support@gibbonsfans.com](mailto:support@gibbonsfans.com) or contact the Company's customer services team by telephone on +44 (0)1621 869999 or by post to Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex, CO1 2ZF, UK. If you contact us via email and post and do not use the cancellation form please clearly indicate in your letter/email that you would like to cancel the contract. Please also include details of your order to help us to identify it. If you send us your cancellation form by e-mail or by post, then your cancellation is effective from the date you send us the e-mail or post the letter to us. For example, you will have given us notice in time as long as you get your letter into the last post on the last day of the cancellation period or e-mail us before midnight on that day.

2.2.2 If you wish to contact the Company for any other reason, including because you have any complaints, you can contact us by telephoning our customer service team at +44 (0)1621 869999 or by e-mailing us at [support@gibbonsfans.com](mailto:support@gibbonsfans.com).

2.2.3 If the Company has to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your order.

2.3 Contacting us if you are a Business: you may contact the Company by telephoning our customer service team at +44 (0)1621 869999 or by e-mailing us at [support@gibbonsfans.com](mailto:support@gibbonsfans.com). If you wish to give the Company formal notice of any matter in accordance with these Terms, please see clause 24.2

### 3. Our Products

3.1 The images of the Products on our Site are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that your computer's display of the colours accurately reflects the colour of the Products. Your Products may vary slightly from those images.

3.2 The packaging of the Products may vary from that shown on images on our Site.

## Use of the Site

- .1 Use of the Site is governed by the Company's Terms of Use. Please take the time to read this, as it includes important terms which apply to every Customer.

## How we use personal information

- .1 The Company only uses personal information in accordance with the Company's Privacy Policy. Please take the time to read our Privacy Policy, as it includes important terms which apply to every Customer.

## Supply of Products

- .1 If you are a Consumer:

6.1.1 these Terms will apply to any Contract between us for the sale of Products to you. Please read these Terms carefully and make sure that you understand them, before ordering any Products from the Site. Please note that before placing an order you will be asked to agree to these Terms. If you refuse to accept these Terms, you will not be able to order any Products from our Site;

6.1.2 the Company will amend these Terms from time to time. Please look at the top of this page to see when these Terms were last updated. Every time you place an order with the Company the Terms in force at the time of your order will apply to the Contract;

6.1.3 once we have accepted your order under clause 7.3:

(a) we reserve the right to make minor changes to the Products if it is necessary to comply with safety requirements or changes in legislation or to implement minor technical adjustments and improvements without obtaining your agreement under clause 6.1.4; and

(b) if we want to make more significant changes to the Products and these Terms we will contact you to notify you of the changes (giving reasonable advance notice if possible) and let you know how to cancel the Contract if you are not happy with the changes. You may cancel either in respect of all the affected Products or just the Products you are yet to receive. If you opt to cancel, you will have to return (at our cost) any relevant Products you have already received and we will arrange a full refund of the price you have paid, including any delivery charges.

6.1.4 subject to clause 6.1.3(a), once we have accepted your order any changes or additions to these Terms must be agreed in writing between us.

- .2 If you are a Business:

6.2.1 the Company shall provide the Products to the Business subject to these Terms which shall govern the Contract to the exclusion of any other terms subject to which any such order is made or purported to be made by the Business;

6.2.2 the Company may at any time without notifying the Business make any changes to the Products which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect their nature or quality and may correct any errors or omissions in any brochure, website, quotation or other document relating to the provision of the Products without any liability to the Business;

6.2.3 any changes or additions to these Terms must be agreed in writing;

6.2.4 these Terms and our Privacy Policy, Cookie Statement and Terms of Use constitute the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter;

6.2.5 any advice or recommendation given by the Company or its employees or agents to the Business or its employees or agents as to the maintenance, application, storage or use of the Products which is not confirmed in writing by a director of the Company is followed or acted upon entirely at the Businesses own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed;

6.2.6 any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company;

6.2.7 you confirm that you have authority to bind any Business on whose behalf you use our Site to purchase Products;

6.2.8 you acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them.

6.2.9 you and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

## 7. How the Contract is formed between a Consumer and the Company

7.1 The Company's shopping pages on the Site will guide you through the steps you need to take to place an order with us. Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each stage of the order process.

7.2 After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 7.3.

- .3 The Company will confirm our acceptance to you by sending you an e-mail. This is when the Contract between us is formed.
- .4 If the Company is unable to supply you with any Products, for example because an item is not in stock or no longer available or because the Company cannot meet your requested delivery date or because of unexpected limits on our resources that we could not reasonably plan for, or because of an error in the price or description of the Products on the Site as referred to in clause 13.5, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount including any delivery costs charged as soon as possible.

### Your Consumer right of return and refund

- .1 This clause 8 only applies if you are a consumer.
- .2 You have three circumstances where you may cancel the contract between us, these are:
- 8.2.1 under the Consumer Contracts (Information, Cancellation and Additional Charges Regulations 2013 (please see clauses 8.3 - 8.8 (inclusive) and 8.12 - 8.14 (inclusive));
- 8.2.2 because of something we have done wrong (please see clauses 8.9, 8.11, 8.12 and 8.14);
- 8.2.3 because the Products are faulty or not as described (please see clauses 9, 8.10 - 8.12 (inclusive) and 8.14)
- .3 You have a legal right to cancel a Contract during the period set out below in clause 8.5. This means that during the relevant period if you change your mind or decide for any other reason that you do not want to receive or keep any Products, you can notify us of your decision to cancel the Contract and receive a refund. Advice about your legal right to cancel the Contract is available from your local Citizens' Advice Bureau or Trading Standards office.
- .4 However, this cancellation right does not apply in the case of:
- 8.4.1 Products that are made to your specifications or are clearly personalised; and
- 8.4.2 any Products which become mixed inseparably with other items after their delivery.
- .5 Your legal right to cancel a Contract starts from the date on which the Company e-mails you under clause 7.3. Your deadline for cancelling the Contract then depends on what you have ordered and how it is delivered, as set out below:

	January and the end of the day on 24 January.
Your Contract is for either of the following: <ul style="list-style-type: none"> <li>one Product which is being delivered in different pieces on separate days.</li> <li>multiple Products which are delivered on separate days.</li> </ul>	The end date is 14 days after the day on which you receive the last piece of the Product or the last of the separate Products ordered. Example: if we provide you with email confirmation of our acceptance on 1 January and you receive the first piece of your Product or the first of your separate Products on 10 January and the last piece or last separate Product on 15 January you may cancel in respect of all the pieces of the Product and any or all of the separate Products at any time between 1 January and the end of the day on 29 January.
Your Contract is for the regular delivery of Products over a set period.	The end date is 14 days after the day on which you receive the first delivery of the Products. Example: if we provide you with email confirmation of our acceptance on 1 January in respect of Products to be delivered at regular intervals over a year and you receive the first delivery of your Product on 10 January, you may cancel at any time between 1 January and the end of the day on 24 January. 24 January is the last day of the cancellation period in respect of all Products to arrive during the year.

- 8.6 To cancel the Contract within the cancellation period, you just need to let us know that you have decided to cancel. Please see clause 2.2.1.
- 8.7 If you cancel your Contract we will:
- 8.7.1 refund you the price you paid for the Products. However, please note, we are permitted by law to reduce your refund to reflect any reduction in the value of the Products, if this has been caused by your handling them in a way which would not be permitted in a shop. For example, you would not be able to use the Products or change the condition of the Products, such as marking or damage. Although you can open the cardboard packaging to see the Products you must not damage the packaging unless you want to keep the Products (see clause 8.8.3);

Your Contract	End of the cancellation period
Your Contract is for a single Product (which is not delivered in instalments on separate days).	The end date is the end of 14 days after the day on which you receive the Product. Example: if we provide email confirmation of our acceptance on 1 January and you receive the Product on 10 January you may cancel at any time between 1

- 8.7.2 refund any delivery costs you have paid, although, as permitted by law, the maximum refund will be the costs of delivery by the least expensive delivery method we offer (provided that this is a common and generally acceptable method). For example, if we offer delivery of a Product within 1 Business Day at one cost but you choose to have the Product delivered within the same day at a higher cost, then we will only refund what you would have paid for the cheaper delivery option;
- 8.7.3 make any refunds due to you as soon as possible and in any event within the deadlines indicated below:
- (a) if you have received the Products and we have not offered to collect them from you: 14 days after the day on which we receive the Products back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product(s) back to us. For information about how to return Products to us, see clause 8.8 and 8.12;
- (b) if you have not received the Products or you have received them and we have offered to collect them from you: 14 days after you inform us of your decision to cancel the Contract.
- 8.8 If any Products have been delivered to you before you decide to cancel your Contract:
- 8.8.1 then you must return the Products to us without undue delay and in any event not later than 14 days after the day on which you let us know that you wish to cancel the Contract.
- 8.8.2 you can either send the Products back to us to the following address Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex, UK, CO1 2ZF or hand them over in person Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex, CO1 2ZF. If we have offered to collect the Products from you as advised in our acceptance email under clause 7.3, we will collect the Products from the address to which they were delivered. We will contact you to arrange a suitable time for collection; and
- 8.8.3 the Products must be returned in their original packaging.
9. You may also end the Contract between us because of something we have done or are going to do (for example, we have told you about a change to the Products or these Terms which you do not agree to, or we have told you about an error in the price or description of the Products you have ordered and you do not wish to proceed, or there is a risk that supply of the Products may be significantly delayed due to an Event Outside Our Control, or you have a legal right to end the Contract because of something we have done wrong). If any of the above applies you must tell us that you would like the Contract between us to end (please see clause 8.11), You must return the Products to us without undue delay, unless we have offered to collect them from you, in which case, we will contact you to arrange a suitable time for collection;
- 8.10 If you have rejected the Products under clause 9 because they are faulty or mis-described you need to tell us (please see clause 8.11) and return the Products to us (unless we have offered to collect them from you, in which case, we will contact you to arrange a suitable time for collection). Where any Products do not comply with your statutory rights under clause 9 we will provide the legal remedies that are available to you. If this involves a refund (which will include any applicable delivery charges), a refund will be made within 14 days, beginning with the day on which we agree that you are entitled to a refund.
- 8.11 If clauses 8.9 or 8.10 apply to you, you need to tell us that you want to end the contract between us or reject the Products. To do this you can e-mail us at support@gibbonsfans.com or contact the Company's customer services team by telephone on +44 (0)1621 869999 or inform us by post via Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex, CO1 2ZF, UK.
- 8.12 We will pay the costs of return:
- (a) where we have agreed that we will do so;
- (b) if you are ending the Contract under clause 8.9; or
- (c) if you are ending the Contract under clause 8.10 (except we will not pay for the costs of return, if you return the Products in person to the place you took delivery of them),
- in all other circumstances, you must pay the costs of return.
- 8.13 If you are responsible for the costs of returning the Products to us and the Product is one which cannot be returned by post, we estimate that if you use the carrier which delivered the Products to you, these costs should not exceed the sums we charged you for delivery. If we have offered to collect the Products from you and we are not required by law to pay for the costs of collection, we will charge you the direct cost to us for the collection. We charge £72.00 plus VAT (£86.40 including VAT) for collection of; ranges FP 5005, 5006, 5007, 5008, 5009, 5010, 5016, 5017, 5018, 5025, 5026, 5027, 5028, 5029, 5030, 5031, 5032, 5033, 5034, 5035, 5037 and 5047.
- 8.14 Any refunds that are made will be on the credit card or debit card used by you to pay. If you used vouchers to pay for the Products, we may refund you in vouchers.
- 9. If you are a Consumer and the Products are faulty**
- 9.1 Because you are a Consumer, we are under a legal duty to supply Products that are in conformity with this Contract. As a Consumer, you have legal rights in relation to Products that are faulty or not as described. These legal rights are not affected by anything in these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.
- 9.2 Summary of your legal rights:
- 9.2.1 These are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.

9.2.2 The Consumer Rights Act 2015 says goods (including any digital content supplied on them) must be as described, fit for purpose and of satisfactory quality. During the expected life of your goods (which is around 24 months if used correctly and in accordance with user instructions) your legal rights entitle you to the following:

- (a) up to 30 days: if your item is faulty, then you can get a refund; and
- (b) up to 6 months: if your faulty item cannot be repaired or replaced, then you're entitled to a full refund in most cases.

## **0. How the Contract is formed between a Business and the Company**

- 0.1 No order submitted by the Business shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 0.2 The quantity, quality and description of the Products and any specification for them shall be as set out in the Company's quotation or the Businesses order (if accepted by the Company) and otherwise in accordance with the Company's current brochure, website or other published literature relating to the Products from time to time, subject to these Terms.
- 0.3 A quotation for the Products given by the Company shall not constitute an offer. A quotation is only valid for 30 days.
- 0.4 The Business shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Business, and for giving the Company any necessary information relating to the Products within a sufficient time to enable the Company to perform the Contract in accordance with its Terms.
- 0.5 The Business shall be responsible for ensuring that the nature, capacity and performance of the Products are sufficient and suitable for the Business's purposes and the Company makes no warranty in relation to such matters.
- 0.6 No order which has been accepted by the Company may be cancelled by the Business except with the agreement, in writing of the Company and unless the Company receives a minimum of 24 hours' notice in writing before delivery of the Products and on terms that the Business shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

## **1. Termination for Businesses**

- 1.1 Either the Business or the Company may (without limiting any other remedy) at any time terminate the Contract with immediate effect by giving written notice to the other if the
  - 11.1.1 commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required in writing to do so; or
  - 11.1.2 ceases to trade, is deemed unable to pay its debts (as defined in the Insolvency Act 1986, s.123 or s.268 as applicable), goes into liquidation, becomes bankrupt, makes a composition or voluntary arrangement with its creditors or has a receiver or administrator appointed.

11.2 On termination of the Contract for any reason the Business shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Products supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt.

11.3 The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## **12. Charges for Businesses**

- 12.1 The price of the Products shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of delivery or deemed delivery.
- 12.2 All prices quoted may be altered by written notice to the Business at any time before delivery.
- 12.3 Except as otherwise stated in the Company's written quotation or in any price list of the Company, and unless otherwise agreed in writing between the Business and the Company, all prices are given by the Company on an ex works our factory basis, and where the Company agrees to deliver the Products otherwise than at the Company's premises, the Business shall be liable to pay the Company's charges for transport, packaging, postage and insurance.
- 12.4 Unless otherwise stated in writing by the Company all prices quoted shall be exclusive of VAT, and any other government taxes and ancillary costs in respect of which the Company shall be entitled to make additional charges, all of which the Business shall be additionally liable to pay to the Company.

## **13. Charges for Consumers**

- 13.1 The prices of the Products will be as quoted on the Site at the time you submit your order. We take all reasonable care to ensure that the prices of Products are correct at the time when the relevant information was entered onto the system. However please see clause 13.5 for what happens if we discover an error in the price of Product(s) you ordered.
- 13.2 Prices for our Products may change from time to time, but changes will not affect any order you have already placed.
- 13.3 The price of the Products includes VAT (where applicable) at the applicable current rate chargeable in the UK for the time being. However, if the rate of VAT changes between the date of your order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Products in full before the change in VAT takes effect.
- 13.4 The price of the Products does not include delivery charges. Our delivery charges are as advised to you before you confirm your order. To check relevant delivery charges, please refer to our delivery charges page.

- 3.5 Our Site contains a large number of Products. It is always possible that, despite our reasonable efforts, some of the Products on the Site may be incorrectly priced and/or described. If we discover an error in the price or description of the Products you have ordered we will contact you in writing to inform you of this error and we will give you the option of continuing to purchase the Products at the correct price or with the correct description or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. Please note that if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Products to you at the incorrect (lower) price.
- 3.6 You can only pay for Products using a debit card or credit card. We accept the following cards: American Express, MasterCard, Visa
- 3.7 Payment for the Products and all applicable delivery charges is in advance. We will not charge your debit card or credit card until we dispatch your order.
- 4. Terms of payment for Businesses**
- 4.1 Unless a Business holds an account with the Company or as otherwise agreed, payment must be made in advance of despatch, in full and in cleared funds before the Company will despatch the Products to the Business. No Payment shall be deemed to have been received until the Company has received cleared funds.
- 4.2 Businesses with an account must settle the account in cleared funds by the end of the month following the relevant invoice date.
- 4.3 The price of the Products and any additional sums payable shall be paid by the Business (together with any applicable VAT, and without any set-off or other deduction) on the due date for payment and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Business. The time of payment of the purchase price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 4.4 If the Business fails to make any payment on the due date then, without limiting any other right or remedy available to the Company, the Company may:
- 14.4.1 Cancel the Contract or cancel or suspend any further deliveries of Products to the Business;
- 14.4.2 Refuse the Business any further credit;
- 14.4.3 Appropriate any payment made by the Business to such of the Products (or the Products supplied under any other contract between the Business and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Business); and
- 14.4.4 Charge the Business interest (both before and after any judgment) on the amount unpaid, at the rate of 2 per cent per annum above Lloyds TSB Bank PLC's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 4.5 Notwithstanding any statement to the contrary in any invoice or confirmation of sale note, the Company reserves the right to refuse the Business any further credit at any time and to demand immediate payment of any outstanding invoice.
- 14.6 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 14.7 The Company will accept payment in Sterling or Euros, United States Dollar by credit card, debit card or BACS. If payment is to be made in advance of despatch, and it is to be made by cheque then it must be made in sufficient time for the cheque to clear prior to the agreed date of despatch and, unless the Business has an account, the Company shall not be obliged to despatch the Products until the cheque has cleared.
- 15. Delivery for Businesses**
- 15.1 Delivery of the Products shall be made by the Business collecting the Products at the Company's premises at any time after the Company has notified the Business that the Products are ready for collection or, if some other place for delivery is agreed by the Company, upon the arrival of the Products to that place.
- 15.2 Although the Company will endeavour to supply the Products within any specified delivery time, because of the possibility of delays on the part of the Company's suppliers, any dates quoted for delivery of the Products are approximate only and therefore time for delivery shall not be of the essence. The Products may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Business.
- 15.3 The Company shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure event or the Businesses failure to provide the Company with adequate delivery instructions or any other instructions, or documentation, that is relevant to the supply of the Products.
- 15.4 Where the Products are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Business in respect of any one or more instalments shall not entitle the Business to treat the Contract as a whole as repudiated.
- 15.5 Subject to clause 15.7, if the Company fails to deliver the Products, or delivers less Products than were ordered, its liability shall be limited to:
- 15.5.1 replacement Products supplied by the Company; or
- 15.5.2 a refund of the price of the Products that are not delivered.
- 15.6 These Terms shall apply to any repaired or replacement Products supplied by the Company.
- 15.7 The Company shall not be liable for any non-delivery of Products (even if caused by the Company's negligence in respect of partial non-delivery) unless the Business gives written notice to the Company of the non-delivery within 24 hours of receipt of the despatch confirmation of the Products in the case of total non-delivery or within 24 hours of delivery in respect of partial non-delivery and provides a complete statement of claim to the Company within 7 days of the date of the written notice. Following receipt of the notification for partial non-delivery, the Company must be given the opportunity to inspect and re-count or re-weight the Products received.

5.8 If the Business shall fail to give notice in accordance with 15.7 above the Products shall be deemed to be delivered in accordance with the Contract and, without prejudice to earlier acceptance by the Business, it shall be bound to accept and pay for the same accordingly.

5.9 Any Products that are returned by the Business must be returned in their original packaging. The Company considers the pallet as part of the packaging and therefore, if a pallet was used to deliver the Products and the Products are no longer securely held on the pallet it will have to be re-palletised before the Products are transported, otherwise the Company may not be able to collect the returned Products.

5.10 If the Business does not re-palletise the Products where necessary and the Company is unable to collect the Products the Business will be responsible for the costs incurred by the Company in organising for alternative transport or re-palletising the Products.

5.11 In the case of Products ordered in error the Company will offer the Business a refund, subject to clause 15.12.

5.12 If Products were ordered in error or are not found to be faulty by the Company after the Company's inspection and testing the Company reserves the right to charge the Business 25% of the cost of the Products returned.

5.13 If Products are re-sold by the Business, the Company shall not have any liability for damage caused to the Products during delivery to its successors in title to the Products, whether under the warranty in clause 19 or otherwise.

5.14 If the Business fails to take delivery of the Products on the date the Business is notified that the Products are ready under clause 15.1 or fails to give the Company adequate delivery instructions or documentation needed to deliver the Products at the time stated for delivery (otherwise than by reason of any cause beyond the Business's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may:

15.14.1 store the Products until actual delivery and charge the Business for the reasonable costs of storage (including insurance); and

15.14.2 After 30 Business Days sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses):

(a) where the Business has paid for the Products, account to the Business for any excess over the price of the Products purchased by the Business; or

(b) where the Business has not yet paid for the Products, charge the Business for any shortfall below the price of the Products purchased by the Business..

## 16. Delivery for Consumers

16.1 The Company will contact you with an estimated delivery date, which will be within 30 days (unless agreed otherwise between us) after the date on which we e-mailed you to confirm our acceptance of your order if you are in the UK or the European Union. However, if you are outside of the UK or European Union the time period within which the Products will be delivered to you may be longer. Occasionally our delivery to you may be affected by an Event Outside the Company's Control. See clause 22 for our responsibilities when this happens.

16.2 If no one is available at your address to take delivery, our courier will leave you a note that the Products have been returned to the couriers' depot, in which case, please contact them to rearrange delivery. If you are unable to contact the courier please contact us instead.

16.3 Delivery of an order shall be completed when we:

16.3.1 deliver the Products to the address you gave us; or

16.3.2 if the Products are being collected, where you, or a carrier (organised by you), collect the Products from us,

the Products will be your responsibility from then on.

16.4 You own the Products once we have received payment in full, including all applicable delivery charges.

16.5 If we miss the 30-day delivery deadline for any Products then you may cancel your order straight away if any of the following apply:

16.5.1 we have refused to deliver the Products;

16.5.2 delivery within delivery deadline was essential (taking into account all the relevant circumstances); or

16.5.3 you told us before we accepted your order that delivery within the delivery deadline was essential.

16.6 If you do not wish to cancel your order straight away, or do not have the right to do so under clause 16.5, you can give us a new deadline for delivery, which must be reasonable, and you can cancel your order if we do not meet the new deadline.

16.7 If you do choose to cancel your order for late delivery under clause 16.5 or clause 16.6, you can do so for just some of the Products or all of them, unless splitting them up would significantly reduce their value. If the Products have been delivered to you, you will have to return them to us or allow us to collect them, and we will pay the costs of this. After you cancel your order we will refund any sums you have paid to us for the cancelled Products and their delivery.

## 17. International delivery

17.1 We deliver to the countries listed on this page: <http://www.gibbonsfans.com/media/resources/PDF/Shipping%20Costs.pdf> ("International Delivery Destinations"). However, there are restrictions on some Products for certain International Delivery Destinations, so please review the information on that page carefully before ordering Products.

7.2 If you order Products from our Site for delivery to one of the International Delivery Destinations, your order may be subject to import duties and taxes which are applied when the delivery reaches that destination. Please note that we have no control over these charges and we cannot predict their amount.

7.3 You will be responsible for payment of any such import duties and taxes. Please contact your local customs office for further information before placing your order.

7.4 You must comply with all applicable laws and regulations of the country for which the Products are destined. We will not be liable or responsible if you break any such law by ordering our Products.

## 8. Risk and property for Businesses

8.1 Risk of damage to or loss of the Products shall pass to the Business:

18.1.1 in the case of Products to be collected from the Company's premises, at the time when the Company notifies the Business that the Products are available for collection;

18.1.2 where the Products are to be insured by the Company whilst in transit and the Products are to be delivered otherwise than at the Company's premises, at the time of delivery; or

18.1.3 notwithstanding section 32(3) of the Sale of Goods Act 1979, where it has not been specifically agreed between the parties that the Products are to be insured by the Company whilst in transit and the Products are to be delivered otherwise than at the Company's premises, at the time of delivery to the carrier (being the first carrier in the case of there being more than one carrier involved in making a delivery).

8.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Business until:

18.2.1 the Company has received in cash or cleared funds payment in full (in cash or cleared funds) of the price of the Products that the Company has supplied to the Business in respect of which payment is due; and

18.2.2 if the Business resells the Products in which case title to the Products shall pass to the Business at the time specified in clause 18.5

8.3 Until such time as the property in the Products passes to the Business:

18.3.1 the Business shall:

- (a) keep the Products separate from those of the Business and third parties so that they remain readily identifiable as the Company's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) keep the Products properly stored, protected and insured for their full price from the date of delivery or collection;
- (d) notify the Company immediately if the Business becomes subject to any of the events listed in 11.1;

(e) give the Company such information relating to the Products as the Company may require from time to time.

18.4 The Business shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company, but, if the Business does so, all monies owing by the Business to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.

18.5 Subject to clause 18.7 the Business may resell or use the Products in the ordinary course of its business (but not otherwise) before the Company receives payment for the Products. However, if the Business re-sells the Products before that time:

18.5.1 it shall sell the Products for the account of the Company and such of the proceeds of sale that cover the price of the Products shall be held on trust for the Company and shall not be mixed with other money or paid to any overdrawn bank account, and shall be at all times identified as the Company's money;

18.5.2 it does so as principal and not as the Company's agent; and

18.5.3 title to the Products shall pass from the Company to the Business immediately before the time at which resale by the Business occurs.

18.6 If any of the Products are incorporated in or together with any products manufactured or assembled by the Customer, the Customer shall maintain sufficient records to enable such Products to be identified, measured or otherwise quantified as the Company's property.

18.7 If before title passes to the Business the Business becomes subject to any of the events listed in clause 11.1 then, without limiting any other right or remedy the Company may have:

18.7.1 the Company may at any time (provided the Products are still in existence and have not been resold, or irrevocably incorporated into another product), require the Business to deliver up the Products to the Company;

(a) if the Business fails to do so promptly, enter on any premises of the Business or any third party where the Products are stored and repossess the Products;

(b) all monies due to the Company from the Business on any account shall become immediately payable; and

(c) the Business's right to possession and power of sale of the Products shall immediately cease.

18.8 the Business shall immediately account to the Company for:

18.8.1 any Products unsold, by way of return or payment; and



- 18.8.2 any Products incorporated into any new articles, by way of payment; and
- 18.8.3 the relevant part of any proceeds of sale of any Products resold as covers the price due to the Company for such Products; or
- 18.8.4 as an alternative to clause 18.8.1 above, at the Company's discretion, the full price for any such Products.
- 8.9 In relation to any of the Products which remain the property of the Company, the Company may give to the Business written notice at any time withdrawing the Business's power of sale under clause 18.5.

## 9. Warranties

- 9.1 The Company is providing the Warranty and the Extended Warranty (as defined below) and the Company's contact address is Gibbons Fans Ltd, Unit 21, Moorside Business Park, Eastgates, Colchester, Essex, CO1 2ZF, UK.
- 9.2 The territorial scope of the Warranty is worldwide and the Extended Warranty is UK and Europe only.
- 9.3 The Company warrants to the Customer and its successors in title to the Products that the Products shall be of satisfactory quality, shall conform to their description or specification and shall be fit for their normal purpose or any particular purpose that the Company has confirmed in writing that they are fit for (if any) and, subject to fair wear and tear, remain so from the date of delivery until 12 months from the date of purchase, provided that the Products have not been damaged in transit by the Customer or its successors in title ("the Warranty").
- 9.4 The Company warrants to the Customer and its successors in title to the Products that the Products shall be of satisfactory quality, shall conform to their description or specification and shall be fit for their normal purpose or any particular purpose that the Company has confirmed in writing that they are fit for (if any) and, subject to fair wear and tear, remain so from the expiry of the Warranty until the date falling 24 months after the date of delivery of the Products to the Customer ("the Extended Warranty"), provided that:
- 19.4.1 the Products have not been damaged in transit by the Customer or its successors in title; and
- 19.4.2 an extended warranty card is completed (by the person claiming under the Extended Warranty) and returned to the Company within 28 days of delivery of the Products to the person claiming under the Extended Warranty.
- 9.5 The Warranty and the Extended Warranty are conditional upon:
- 19.5.1 written notice of any defect being given to the Company within 14 days from discovery of the defect, together with proof of purchase and a valid serial number for the Products;
- 19.5.2 the Company being afforded the opportunity of inspecting and testing the Products to ascertain the cause of the defect; and the Company being satisfied that:
- (a) the Products have been properly stored, used and cared for by the Customer and its successors in title prior to the defect occurring;

- (b) the Products have not been subjected to any incorrect, abnormal or improper load, use, accident or unauthorised modification, repair or application, whether by the Customer or any third party;
- (c) the Products have been used and maintained in accordance with the safety guidelines and recommended usage set out in the instruction manual provided with the Products and any other instructions or recommendations confirmed in writing by the Company;
- (d) the Products have not been wilfully damaged, neglected or misused;
- (e) the Company's, retailer's or manufacturer's, trademark, serial or identification number on the Products have not been removed, defaced or altered; and
- (f) the Company's invoice(s) have been paid in full by the due date for payment by the Customer.

- 19.6 If proof of purchase cannot be provided to the Company or verified by the Company, the start date of the Warranty will be back-dated to the first day of the month of manufacture of the Products.
- 19.7 If you are a Consumer, this warranty is in addition to, and does not affect, your legal rights in relation to Products that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.
- 19.8 The Company's liabilities under the Warranty and the Extended Warranty shall be limited to the Company being afforded a reasonable opportunity of repairing the Products or replacing the Products with new/reconditioned Products free of charge, in which case the Company shall have no further liability to the person claiming under the Warranty or the Extended Warranty.
- 19.9 The person claiming under the Warranty or the Extended Warranty shall be responsible for returning the Products to the company at its own cost.
- 19.10 If, after inspection of the Products by the Company, the Warranty claim or the Extended Warranty claim is accepted by the Company, the Company shall return the repaired Products or replacement Products to the person claiming under the Warranty or the Extended Warranty at its own cost.
- 19.11 If the Warranty claim or the Extended Warranty claim is not valid, the person claiming under the Warranty or the Extended Warranty shall be liable for the return costs and the Company shall not be obliged to return the Products to the person claiming under the Warranty or the Extended Warranty until such costs have been paid in full to the Company.
- 19.12 The Company will not be liable for any damage caused by inappropriate packaging of collected/returned Products by the person claiming under the Warranty or the Extended Warranty.
- 19.13 Any charges incurred by the Company for failed pre-arranged returns are payable by the Customer and clause 15.14.2 shall apply equally to returned Products, except that the Company shall (after deducting all reasonable storage and selling expenses) account to the Customer

only for the price of the returned Products under the Contract or, if lower, the price received.

9.14 All samples, drawings, descriptive matter and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or website are:

19.14.1 issued or published for the sole purpose of giving an approximate idea of the Products described in them;

19.14.2 they shall not form part of the Contract; and

19.14.3 the Contract will not be a sale by sample.

9.15 Subject as expressly provided in these Terms, and except where the Products are sold to a person dealing as a Consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.16 Where the Products are sold under a Consumer transaction the statutory rights of the Customer are not affected by these Terms.

## **0. Limitation of Liability for Businesses**

0.1 Nothing in these conditions excludes or limits the liability of the Company (a) for death or personal injury caused by the Company's negligence or (b) for fraud or fraudulent misrepresentation (c) breach of the terms implied by s.12 of the Sale of Goods Act 1979 (title and quiet possession); or (d) defective products under the Consumer Protection Act 1987.

0.2 Subject to clause 20.1, the Company shall not be liable to the Business or any successor in title by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Products or their use by the Business or any successor in title.

0.3 Irrespective of the effect of clause 20.2 and subject to clause 20.1, the entire liability of the Company in contract, tort (including negligence or breach of statutory duty), misrepresentation (unless fraudulent) or otherwise arising in connection with the supply of Products shall not exceed £5 million, except as expressly provided in these Terms.

## **1. Limitation of Liability for Consumers**

1.1 This clause 21 only applies if you are a Consumer.

1.2 If the Company fails to comply with these Terms, the Company is responsible for loss or damage you suffer that is a foreseeable result of our breach of these Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into this Contract.

21.3 The Company only supplies the Products for domestic and private use. You agree not to use the Products for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

21.4 We do not in any way exclude or limit our liability for:

21.4.1 death or personal injury caused by our negligence;

21.4.2 fraud or fraudulent misrepresentation;

21.4.3 any of the provisions listed in s.31 of the Consumer Rights Act 2015; and

21.5 defective products under the Consumer Protection Act 1987.

## **22. Event Outside the Company's Control**

22.1 The Company shall not be in breach of the Contract, nor liable for any failure or delay in performance of any obligations under it arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Event Outside the Company's Control), including but not limited to any of the following: acts of God, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, fire, explosion, flood, epidemic, lock-out (whether or not by that party), inability or delay in obtaining supplies or services, collapse of building structures, failure or breakdown of plant machinery, machinery, computers or vehicles, death, illness, accident, strikes or other industrial dispute (in each case, whether or not relating to that party's workforce), third party default; but the affected party shall promptly upon the occurrence of such cause so inform the other party in writing, and thereafter such party shall take all action within its power to comply with the terms of the Contract as fully and promptly as possible.

22.2 If an Event Outside the Company's Control takes place that affects the performance of the Company's obligations under the Contract:

22.2.1 we will contact you as soon as reasonably possible to notify you; and

22.3 our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside the Company's Control. Where the Event Outside the Company's Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside the Company's Control is over. If you are a Consumer you may cancel a Contract affected by an Event Outside the Company's Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel you will have to return (at our costs) any relevant Products you have already received and we will refund the price you have paid, including any delivery charges.

22.4 If you are a Business: if the Event Outside the Company's Control prevails for a continuous period of more than 2 months, either party may terminate this Contract without any liability to the other by giving 7 days' written notice to the other party.

### **3. Export terms**

- 3.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.
- 3.2 Where the Products are supplied for export from the United Kingdom, the provisions of this clause 23 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Terms.
- 3.3 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.
- 3.4 Where the Company has not agreed to insure the Products during transit, clause 18.1.3 shall apply and the Company shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

### **4. Communication**

- 4.1 When we refer in these Terms to 'in writing' this includes email (except for the service of any legal proceedings or other documentation in any legal action).
- 4.2 If you are a Consumer you may contact us as specified in clause 2.2. If you are a Business a notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified to the party giving the notice.

### **5. General**

- 5.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 5.2 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 5.3 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, apply with the minimum modification necessary to make it legal, valid and enforceable or be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 5.4 No party shall transfer or assign its rights or obligations under any Contract to any third party without the other Party's prior consent in writing. However, if you are a Consumer and you have purchased a Product as a gift, you may transfer the benefit of our warranty at clause 19 to the recipient without needing to ask our consent.
- 5.5 A person who is not a party to the Contract may not rely upon or enforce any rights pursuant to the Contracts (Rights of Third Parties) Act 1999. However, if you are a Consumer,

the recipient of your gift of a Product will have the benefit of our warranty at clause 19 but the Company and you will not need their consent to cancel or make any changes to these Terms.

- 25.6 If you are a Consumer please note that these Terms are governed by English law. This means a Contract for the purchase of Products through our Site and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.
- 25.7 If you are a Business we both irrevocably agree that English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English courts.