

## General Terms of Sale for Service Orders



of Piller Industrieventilatoren GmbH

59.9.600.0360  
20 Aug 2004 – Page 1 of 6

### 1. Scope

The following General Terms of Sale (GTS) apply exclusively to business transactions with our Customers and govern technical services (technical service = service including inspection, maintenance and repair works for technical products (definition as per DIN 31051)) performed by us, and further information and consulting in this context. GTSs applied to business transactions with the Customer also apply to all future business links between that Customer and us except if agreed otherwise in writing. Terms of the Customer are valid only if and when explicitly recognized by us in writing. Non-response on our part to deviating terms (*of the Customer*) may not be construed as acceptance or consent, also for future contracts. Our terms supersede possible purchase terms of the Customer also if the latter claims that order acceptance is deemed equivalent to the unconditional acceptance of his purchase terms. By accepting our order confirmation, the Customer explicitly waives any legal objections derived from his purchase terms.

### 2. Basis of Contract

2.1. Contractual performance – i.e. diligent professional and competent completion of a customer order – by Piller Industrieventilatoren GmbH is owed exclusively under the terms listed below, viz. that the product concerned is operated, used and maintained in line with its intended purpose and the documentation supplied; that the product is operated (where applicable) exclusively using original Piller accessories, consumables and spare parts; that the product is operated at intended ambient and installation conditions; that all maintenance works – except for the Customer's in-house routine maintenance – are performed by Piller service personnel without the intervention of a third party. Piller Industrieventilatoren GmbH does not assume a procurement risk for spare parts required for a service order.

### 3. Timely Performance of Contract /Handling of Services and Works

3.1. Services and works commissioned to Piller Industrieventilatoren GmbH are performed within reasonable time limits subject to availability of spare parts.

3.2. Piller Industrieventilatoren GmbH will advise the precise service date for on-site repairs to the Customer a reasonable time in advance except when a particular date was agreed. If the performance of the works should not be possible on the agreed date, Piller Industrieventilatoren GmbH must be notified in writing at least 24 hours in advance. If no notice is given in good time, the Customer/Contract Partner undertakes to reimburse possibly incurred travel costs, lost service calls and profits lost by Piller Industrieventilatoren GmbH.

3.3. Except if agreed otherwise in writing, service works in on-site service are performed Mondays to Thursdays between 8 AM and 4.30 PM as well as Fridays between 8 AM and 3 PM (standard working hours) excepting statutory and local holidays as well as 24 and 31 December of a year.

3.4. Service works outside the above-quoted standard working hours or on weekends and holidays may be agreed in individual cases and are charged at the emergency service rate (see Annex 1) of Piller Industrieventilatoren GmbH plus an additional service fee (travel costs and hourly rates).

3.5. The commissioning of Piller Industrieventilatoren GmbH to perform contractual services and works is made in writing or exceptionally by telephone. The service contract with the Customer is created by order confirmation, supply by Piller Industrieventilatoren GmbH or the commencement of service works. Contract conclusion is subject to the proviso of correct and timely supply by our own suppliers.

3.6. Following the commissioning, the service works are performed within a reasonable period thereafter by service personnel of Piller Industrieventilatoren GmbH.

3.7. On completion of the service works, our service personnel drafts a service report to be signed by the Customer in confirmation of the proper completion of commissioned services and works. With his signature, the Customer confirms the acceptance of proper and flawless services and works performed by Piller Industrieventilatoren GmbH.

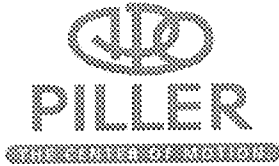
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#### **4. Delay/Postponement and Interruption of Services and Works/Default of Performance**

4.1. If the performance of services and works is delayed due to circumstances attributable to the Customer, the Customer must reimburse the costs of waiting time of dispatched personnel and possibly the costs of renewed travel and/or additional accommodation of personnel of Piller Industrieventilatoren GmbH as per the service rates of Piller Industrieventilatoren GmbH (see Annex 2) as well as lost profits.

4.2. If Piller Industrieventilatoren GmbH is in default of performance, the Customer must initially grant an adequate grace period for performance. If the grace period expires fruitlessly, the Customer may assert claims for compensation under the conditions laid down in Secs. 280, 281, 284, 323 BGB. Compensation claims on account of breach of contract—irrespective of the reason—are created only in line with Item 10. If Piller Industrieventilatoren GmbH has failed to provide the service at the date stipulated in the contract or within a contractually stipulated period, the Customer is entitled to withdraw from or terminate the contract only if the Customer's interest in performance was explicitly tied to the timely performance of the contracted service.

#### **5. Access to Service Object**

The Customer must grant Piller Industrieventilatoren GmbH unrestricted access to the products to perform the service works at the agreed time. The Customer warrants adequate and safe state of access areas and worksite.

#### **6. Other Cooperation Duties of Customer**

6.1. The Customer is required to create the technical and organizational preconditions at his end to allow Piller Industrieventilatoren GmbH to supply the contractual services in full and in compliance with the contract. This includes: free technical support with fault analysis and troubleshooting, the actual implementation of the support provided by Piller Industrieventilatoren GmbH, as well as the supply of all relevant information such as

- 6.1.1 Instructions and guidance as per the Labour Protection Act, local risks, barriers around hazardous sites, supply of a coordinator
- 6.1.2 Supply of scaffolding
- 6.1.3 Insulation and piping works
- 6.1.4 Lifting and transport availability (crane, forklift, chain lifts)
- 6.1.5 Workshop worksites with gantry crane or dry hall
- 6.1.6 Operating media and lubricants
- 6.1.7 Auxiliary personnel
- 6.1.8 Cleaning and disposal of used parts
- 6.1.9 Supply of energy
- 6.1.10 Changing and sanitary rooms, toilets
- 6.1.11 Clearing and/or connection of motors and electrical components
- 6.1.12 Weekend and shift work (approval from factory inspectorate)

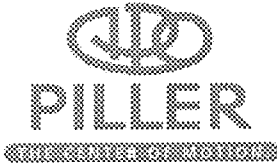
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20 Aug 2004 – Page 3 of 6

6.2. On demand, the Customer must grant Piller Industrieventilatoren GmbH access to the technical records in his possession on the respective products as may be necessary or expedient in connection with the service works.

### 7. Right of Use

The service obligation of Piller Industrieventilatoren GmbH requires that the products in question are either owned by the Customer or that the latter is authorized to use them use and demonstrates this on request of Piller Industrieventilatoren GmbH.

### 8. Additional Works, Spare Parts

8.1. The works commissioned to Piller Industrieventilatoren GmbH are a function of the agreed scope, or in the absence thereof, at our discretion based on the results of an inspection by of our service personnel. Works beyond the agreed scope will be separately invoiced subject to the Customer's consent by type and scope, time expended and incidental expenses at the general rates of Piller Industrieventilatoren GmbH (see Annex 2).

8.2. Necessary spare parts and services are subject to the current rates of Piller Industrieventilatoren GmbH (see Annex 2) plus statutory value-added tax.

### 9. Claims, Warranty, Breach of Contract

9.1. Obvious defects must be claimed by the Customer in writing promptly but not later than within 12 days from date of performance, also with regard to portions of the service usable by the Customer. Concealed defects must be claimed in writing promptly after their detection but latest within the warranty period (see Subsec. 9.6). Claims must contain a description as detailed as possible of the defect. A claim not submitted in good time invalidates the warranty claim of the Customer.

9.2. Other breaches of contract must be raised before the assertion of further rights by the Customer promptly and in writing, and an adequate grace period set.

9.3. If a defect is attributable to Piller Industrieventilatoren GmbH, it will be remedied at the option of Piller Industrieventilatoren GmbH either by a free repair or supplementary performance whereby Piller Industrieventilatoren GmbH is at all times entitled to two attempts of supplementary performance. Defects attributable to the Customer and unwarranted claims will be remedied by order and for account of the Customer at the general current service rates of Piller Industrieventilatoren GmbH.

9.4. When claims are raised, payments of the Customer – irrespective of further provisions of this Contract – may be retained only to an extent in a reasonable proportion to the actual defect.

9.5. In the event of failed supplementary performance, unreasonableness of supplementary performance, refusal of supplementary performance or non-supply of the performance within the contractually agreed period, whereby the Customer has contractually tied his continuing interest in the performance to the supply of the service by the due date, or in the presence of special circumstances which taking the interests of both Parties into account warrant the immediate assertion of any of the following rights, the Customer is entitled under the conditions stipulated by law to demand a lower price (reduction) or fundamentally rescission of the contract and compensation. If the breach of contract does not involve a service provided by Piller Industrieventilatoren GmbH, contract rescission is excluded if the breach is immaterial. With the exception of product liability, rescission is also excluded if the breach of contract is not attributable to Piller Industrieventilatoren GmbH.

9.6. Except if explicitly agreed otherwise, the warranty of Piller Industrieventilatoren GmbH for a proven defective service is valid for a period of 6 months counted from the starting date of the statutory limit period.

9.7. Further claims of the Customer on account of or in connection with breach of contract, defects or consequential damage irrespective of the reason may be asserted only under the provisions in Item 10 except when involving claims under a warranty designed to protect the Customer from the risk of possible consequential damage. In this case, too, Piller Industrieventilatoren GmbH is liable only for the typical and foreseeable damage.

9.8. The warranty and liability of Piller Industrieventilatoren GmbH is excluded when a defect and the resulting damage cannot be demonstrated to result from defective workmanship or material. No claims may be asserted if the discrepancy from the agreed or customary quality is minor.

9.9. Claims must at all times be asserted in writing.

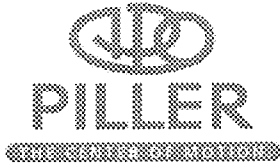
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#### 10. Exclusion and Limits of Liability

- 10.1. In the case of premeditated or grossly negligent breach of contract as well as in the case of culpable injury to life and limb, we are liable for any resulting damage without limitation except if stipulated otherwise by law.
- 10.2. In the case of gross negligence by non-executives, our liability for property and asset damage is limited to the contract-typical and foreseeable damage.
- 10.3. In the case of minor negligence, we are liable for property and asset damage only if major contract obligations have been breached. Our liability in such cases is also limited to the contract-typical foreseeable damage.
- 10.4. Any further liability for damage as laid down in the preceding subsections – irrespective of the legal nature of the claim asserted – is excluded. This applies in particular for unauthorized handling as per Secs. 823, 831 BGB; a possible unlimited liability under the provision of the German Product Liability Act remains unaffected. Consequential damage such as loss of production and lost profits shall be definitely excluded.
- 10.5. Piller Industrieventilatoren GmbH assumes no liability for damage or loss of products in transit. This also applies if Piller Industrieventilatoren GmbH has effected the return shipment of the product. If not agreed otherwise in writing, shipments are made by Piller Industrieventilatoren GmbH uninsured at the risk and for account of the Customer. The selection of shipping route and method is at the discretion of Piller Industrieventilatoren GmbH. The risk of fortuitous deterioration passes to the Customer with the handover of the product to the Customer, freight agent, freight consolidator or other agents designated for the shipment, however, latest at the time of departure from our head- or branch office.
- 10.6. Any further liability is excluded.
- 10.7. The limitations or restrictions of liability as per the preceding Subsecs. 10.4 to 8 apply analogously in favour of executive and non-executive employees or other vicarious agents as well as subcontractors of Piller Industrieventilatoren GmbH.
- 10.8. Claims of the Customer for compensation under the contract may be asserted only within a limit period of one year from the start of the statutory limit period.

#### 11. Termination Without Notice

- 11.1. A major cause of termination for both Parties applies in particular if insolvency proceedings are opened over the assets of the respectively other Party or if such proceedings are denied due to a lack of asset mass.
- 11.2. A major cause for Piller Industrieventilatoren GmbH applies in particular if an unreasonable obstruction or impediment of the service by the Customer is continued also after a reminder and the Customer fails to observe the fundamentals of the Contract.
- 11.3. Any termination must be declared in writing to be effective.

#### 12. Remuneration/Incidental Costs/Estimates/Delay

- 12.1. In the absence of other written agreements, the remuneration shall be based on the stipulated general rates of Piller Industrieventilatoren GmbH (cp. Annex 2). These may be queried from Piller Industrieventilatoren GmbH for each case. The rates do not include the costs of product handling or shipping which must be borne separately by the Customer.
- 12.2. Services performed but not included in the contracted service scope are subject to the general service rates of Piller Industrieventilatoren GmbH (cp. Annex 2).
- 12.3. All remunerations and rates of Piller Industrieventilatoren GmbH are exclusive of tax and subject to current statutory VAT.
- 12.4. The remuneration is due for payment without deduction immediately on supply of the service.

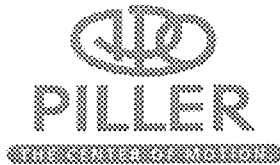
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20 Aug 2004 – Page 5 of 6

12.5. On request, Piller Industrieventilatoren GmbH will issue cost estimates. Except when agreed otherwise, no guarantee of accuracy is assumed. Estimates are non-binding when the amount in excess is minor (up to 10 %). The costs for the preparation of estimates must be reimbursed if the service is not commissioned by the Customer within 3 months from drafting of the estimate. If it is determined during the supply of the service that more works or spare parts are required than scheduled, Piller Industrieventilatoren GmbH must obtain the consent of the Customer for the supply of such other services only if estimated costs would be exceeded by such services or works by more than 10 %.

12.6. In the event of default, under statutory provisions currently 30 days after due date and presentation of invoice, late payment interest of 8 % above the respective basic interest rate of the European Central Bank will be charged. Piller Industrieventilatoren GmbH reserves the right to prove a greater damage supplying proper proof. The Customer/Contract Partner is entitled to prove that no damage or only a minor damage has occurred. The date of payment is the date of receipt of the funds by Piller Industrieventilatoren GmbH or their valuation to Piller's account. The right to assert additional damages remains reserved.

12.7. Default by the Customer renders all payment claims out of the business transaction with that Customer due immediately. In such a case, all liabilities of the Customer to us become due for payment immediately irrespective of any agreements on respite, negotiation of bills of exchange and payment by instalments.

12.8. If payments are deferred and made later than agreed, interest in an amount of 8 % above the basic interest rate in force at the time the respite was granted shall apply without requiring a notice of default.

12.9. If payment terms are not met or circumstances become known or apparent in which due diligence on behalf of Piller Industrieventilatoren GmbH permit substantiated doubts as to the creditworthiness of the Customer, including facts already accomplished at the time of contract conclusion but which we did not or were not required to know at the time, Piller Industrieventilatoren GmbH is entitled irrespective of further statutory rights in such cases to suspend ongoing contract performance and demand advance payments or the supply of an acceptable collateral for outstanding shipments, and after the fruitless expiry of an adequate grace period for the supply of such collateral withdraw from the contract irrespective of further statutory rights. The Customer must reimburse Piller Industrieventilatoren GmbH for any damage resulting from the non-performance of the Contract.

12.10. A right of retention or offset of the Customer is generated only with regard to counterclaims that are not disputed or have been declared legally final. Rights of retention may be asserted by the Customer only on account of counterclaims underlying the same contract.

### **13. Reservation of Title**

13.1. Piller Industrieventilatoren GmbH reserves the right of ownership to all products and materials supplied by it up to the complete settlement of all payables out of the current business transaction.

13.2. The Customer/Contract Partner may supply the object of the service neither for attachment nor for use as collateral. In the case of attachment or confiscation or other disposals by a third party, Piller Industrieventilatoren GmbH must be notified promptly.

13.3. The assertion of property rights and the attachment of the object of the service by Piller Industrieventilatoren GmbH do not constitute a withdrawal from the contract.

13.4. The Customer/Contract Partner is entitled to resell the object of the service as part of his normal business operation. He assigns to Piller Industrieventilatoren GmbH already at this time all payables in the amount of the invoice generated by the resale by a third party. Piller Industrieventilatoren GmbH accepts this assignment. After the assignment, the Customer/Contract Partner is entitled to collect the payables. Piller Industrieventilatoren GmbH reserves the right to collect all payables itself if the Customer does not properly meet his payment obligations and is in default of payment.

13.5. The processing and compounding of the products by the Customer/Contract Partner is at all times made in the name and on instructions of Piller Industrieventilatoren GmbH. If processing involves products not belonging to Piller Industrieventilatoren GmbH, Piller Industrieventilatoren GmbH acquires co-ownership in the new product in a ratio of the value of the object of the service to the value of other materials/spare parts and other objects supplied by Piller Industrieventilatoren GmbH. The same applies if the object of the service is blended with other objects not belonging to Piller Industrieventilatoren GmbH.

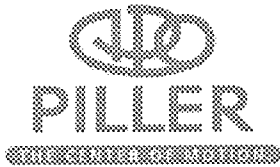
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20 Aug 2004 – Page 6 of 6

### 14. Force Majeure

14.1. If for reasons not attributable to it, Piller Industrieventilatoren GmbH does not receive, or not fully or by the correct date, deliveries or services from its suppliers or if events of force majeure occur, Piller Industrieventilatoren GmbH shall inform the Customer in writing in good time. In such a case, Piller Industrieventilatoren GmbH is entitled to postpone the service by the duration of the obstruction or withdraw from the Contract in whole or in part with respect to the unperformed portion as long as Piller Industrieventilatoren GmbH has met its above-quoted reporting obligation and has not assumed the procurement risk. Force majeure is deemed equivalent to strike, lockout, acts of authority, energy and raw material shortages, non-culpable transport bottlenecks e.g. as a result of fire, water and mechanical breakdowns, and any other obstructions which after a fair examination have not been culpably produced by Piller Industrieventilatoren GmbH.

14.2. If a performance date has been bindingly agreed and if the agreed performance date is not met due to the effects quoted in Subsec. 13.1, the Customer is entitled after the fruitless expiry of an adequate grace period to withdraw from the contract with respect to the unperformed portion.

### 15. Jurisdiction/Miscellaneous

15.1. The place of jurisdiction is Northeim. Governing law is the law of the Federal Republic of Germany and the provisions of UN Purchase Law (*UN Convention on Contracts for the International Sale of Goods*) shall not apply. Piller Industrieventilatoren GmbH is, however, entitled to take out proceedings also at the Customer's general jurisdiction.

15.2. Amendments of contract terms must be given in writing. This also applies to any waiver of the requirement for the written form.

15.3. In the event that individual contract provisions should prove ineffective, the remaining provisions shall remain fully effective. The place of the ineffective provision shall be taken without further notice by a provision that within legally permitted limits comes as close as possible to the former.

Moringen, 01 January 2006

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