



# ECMA Terms and Conditions of Sale

## 1. Scope

- 1.1. These general ECMA terms and conditions of sale (the “Terms and Conditions”) shall apply to and be part of all contracts between the carton maker and his customers. These Terms and Conditions shall also apply to all pre-contractual relationships between the carton maker and his customers, including to any offer made by the carton maker.
- 1.2. Unless expressly otherwise agreed in writing, these Terms and Conditions shall prevail in the event of a discrepancy with any other written or oral correspondence or documents exchanged between the carton maker and his customers.
- 1.3. Any variation from these Terms and Conditions is only binding when it is explicitly accepted in writing by the carton maker. The customers’ consent (either implicitly or explicitly) to the applicability of these Terms and Conditions to a contract shall automatically apply to subsequent contracts.
- 1.4. Any general conditions set forth by customer in any document are explicitly rejected and shall not be binding, unless and to the extent that they have been explicitly accepted by the carton maker in writing.

## 2. Offers

- 2.1. Unless stipulated otherwise, an offer is considered to be expired in case it is not confirmed by an order of the customer within one (1) month.
- 2.2. Orders must be in line with the quantities offered. In case the quantities of an order differ from the quantities offered, prices will be revised accordingly in the order acceptance.
- 2.3. Administrative costs resulting from an excessive price quotation will be passed on by the carton maker to the customer if the offer is not followed by an order, provided the carton maker has given pre-notification to the customer.
- 2.4. Should the preparation of an offer require development, engineering, sample costs and proofs, the carton maker is entitled to pass on these costs to the customer.
- 2.5. The intellectual property of carton designs remains with the carton maker. Such new designs cannot be used by the customer without payment and/or written agreement.
- 2.6. Prices in the offer are based on the elements that the customer specified in his request. In case of changes, prices will be revised.
- 2.7. The carton maker can only accept responsibility for the quality of the cartons if he had full responsibility for the purchase of the board.

## 3. Order Acceptance and Pricing Conditions

- 3.1. All orders are not binding on the carton maker unless he has accepted the order in writing or electronically covering all the elements of the order. Such an order acceptance or contract will be sent by the carton maker to the customer

- within a maximum period of two (2) weeks from the date of the receipt of the order.
- 3.2. The customer must clearly specify in his order the cartons delivery schedule. The costs resulting from that schedule will constitute an element of the cost price.
  - 3.3. Whenever a contract exceeds the period of six (6) months, provisions about quantities and delivery have to be fixed and a raw material price clause will be included.
  - 3.4. Any change in the elements of the order acceptance or the contract caused by the customer give the carton maker the right to amend the prices accordingly.
  - 3.5. Prices in order acceptance and contracts are based on the raw material prices valid on the date of the signature of the order acceptance or the contract. In the event of a change of these raw material prices, the contracting parties undertake to renegotiate the prices for the agreed period. If no reasonable agreement can be reached, the carton maker reserves the right to terminate the contract unilaterally.
  - 3.6. Unless parties explicitly agree otherwise the costs of package, transport insurance, import and export duties as well as all other levies and taxes in respect of the delivered goods and transport shall be borne by the customer.
  - 3.7. If the customer cancels the order , the carton maker is entitled to invoice to the customer full costs of the board he reserved for the order plus all additional costs incurred for the preparation of the order.

#### **4. Delivery. Invoicing**

- 4.1. Goods will be dispatched and invoiced on the delivery date fixed in the order acceptance or in the contract.
- 4.2. If delivery of the total quantity is not effected within the agreed period at the request of the customer, the goods and additional costs of storage (pallets per week) will be invoiced by the carton maker to the customer.
- 4.3. Finished goods cannot be guaranteed quality wise when stored longer than six (6) months after the date of manufacture.
- 4.4. The transfer of risk to the customer is achieved at the moment when delivery is completed, notwithstanding retain rights of ownership.
- 4.5. If the board reserved for the order is not converted within three (3) months of the agreed delivery time the carton maker is entitled to invoice the board to the customer and storage charges may be applied (pallets per week).
- 4.6. Particular services such as rush orders or exceptional JIT delivery will be invoiced additionally.

#### **5. Intellectual and Industrial Property Rights**

- 5.1. The information and data contained in any document or support (i.e. designs, dies, negatives, plates, printing cylinders, forming tools, films and digital data) supplied and prepared by the carton maker shall remain the carton maker's exclusive property along with all intellectual property rights (including but not limited to patent rights, copyrights, trademarks, designs) attached thereto. Therefore, no right, title or interest is transferred to the customer in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and

other intellectual property rights relating to the goods even if the customer has financially contributed to their creation.

- 5.2. The customer shall defend, indemnify and hold harmless the carton maker from and against any and all claims, losses, damages, costs, penalties, liabilities, judgments, amounts paid in settlement, fines and expenses (including, without limitation, court costs and reasonable fees of attorneys and other professionals) arising out of or in connection with any infringement of intellectual and/or industrial property rights in the case of:
- the production or reproduction in accordance with the order and the instructions of the customer, and/or;
  - materials and/or texts, trademark designs and construction for opening and closing of the carton made available to the carton maker by the customer or on behalf of the customer by third parties.

The customer will indemnify the carton maker against damages allowed by the competent court with respect to any such claim.

- 5.3. Projects, drawings, sketches, printing proofs, blanks etc. property of the customer are stored with the carton maker at the risk of the customer.
- 5.4. The storage of the materials mentioned under 5.3 ends one (1) year after their latest use. In case of specific legislation related to the sector in which the customer operates, a longer storage term not exceeding the legal provisions can be agreed.

## **6. Tolerances**

- 6.1. Printing: Printing takes place according to internationally recognised printing standards and agreed tolerances. Printing proofs, texts and bar codes approved by the customer are binding. Production according to these standards cannot give rise to complaints.
- 6.2. Quantity: Tolerances of the quantities delivered are subject to the individual job requirements with regard to quantity, material, process type, size, etc. The appropriate percentage of tolerance will be specified in the order acceptance. In the absence of a specification in the order acceptance, the carton maker is deemed to have performed adequately if quantities do not exceed plus or minus 10%.
- 6.3. Within the defined quantity tolerances, the invoicing is based on the effective delivery.

## **7. Packaging**

- 7.1. Packaging specifications must be defined and agreed upon in the order acceptance or contract. The carton maker is entitled to charge changes by the customer in the agreed specifications separately.

## **8. Acceptance of goods**

- 8.1. Upon delivery of the goods, the customer shall immediately and as thoroughly as possible inspect the goods. In the event of any discovered defects (including damage during transport), the customer will notify the carton maker

forthwith and ultimately within 24 hours after delivery. Failure to comply with these obligations will result in forfeiture of the claim.

- 8.2. The customer will be entitled to submit claims relating to defects that could not be discovered upon delivery, to be demonstrated by the customer, until one (1) month after delivery was made. After expiry of this period the customer shall not be allowed to submit any further complaints relating to any possible defects in the goods to the carton maker.
- 8.3. Supplies acknowledged by the carton maker as being defective will either be corrected or credited. The carton maker shall not be liable to pay compensation for consequential losses.
- 8.4. If a part of the delivery gives reason for a claim, the principle of mitigation for adverse consequences for the remainder of the delivery will be applied.
- 8.5. Any qualitative claim not accepted by the carton maker should be submitted to an arbitration committee.
- 8.6. The liability of the carton maker is limited to the amount of the invoice. He has no liability for consequential losses.
- 8.7. Incorrect storage or use of the goods by customer precludes the liability of the carton maker.
- 8.8. Under no circumstance can the customer make a claim against carton maker after the goods delivered or part thereof have been used, processed or converted.

## **9. Ownership of the goods**

- 9.1. The carton maker shall retain his right of ownership over goods supplied pending full and final payment of the relevant invoice, to the extent that the legislation of the country where the goods are at the moment of the recourse allows it, and when all necessary conditions for the law to apply have been fulfilled.

## **10. Payment**

- 10.1. Unless otherwise agreed in writing by the carton maker, payment shall be made within thirty (30) days as from the date of the invoice, without any deduction whether by way of set-off, counterclaim, discount or otherwise unless the carton maker has given its prior written consent to the deduction. Bank charges will be borne by the customer.
- 10.2. If the customer fails to pay any sum due pursuant to the contract all outstanding invoices and sums payable to the carton maker shall become due automatically and immediately.
- 10.3. Any amount unpaid on its due date shall bear interest, by right and without any formal notice, at the annual rate equal to the statutory interest rate as then applicable in the country where the carton maker's registered office is located, increased with 2%, until payment is made.

## **11. Force Majeure**

- 11.1. The carton maker may defer the date of delivery or discontinue such delivery or cancel the contract or reduce the volume or quantity of the goods ordered by the customer if it is prevented from or delayed in the carrying on of its



business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency or defence requirements, riot, civil commotion, fire, explosion, flood, epidemic, accident, malfunction of machinery or apparatus, lock-out strike or other labour dispute (whether or not relating to either party's workforce), or restraint or delay affecting carriers or inability or delay in obtaining supplies of adequate or suitable raw materials including fuel and power, or sharp increase in the price of such raw materials, or non- or non-timely performance by any third party.

Provided that, if the event in question continues for a continuous period in excess of six (6) months, the customer shall be entitled to give notice in writing to the carton maker to terminate the contract.

- 11.2. In the event of a temporary situation of force majeure, the carton maker shall be entitled to extend the envisaged agreed delivery scheduled by the time during which the temporary situation continues. As soon as either party becomes aware of the occurrence or the imminence of such an event, it shall inform the other party thereof and shall take reasonable steps to limit its damageable consequences.

## **12. Governing Law**

- 12.1. These Terms and Conditions and any contract entered into between the carton maker and his customers will be governed by and construed and enforced in accordance with the laws of the country where the carton maker's registered office is located. The provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods are explicitly excluded.

## **13. Dispute**

- 13.1. Any dispute arising out of or in connection with these Terms and Conditions and any contract entered into between the carton maker and his customers shall be referred to and finally resolved by arbitration under the ICAC Rules of Arbitration of the European Arbitration Chamber, which Rules are deemed to be incorporated by reference into this clause.
- 13.2. There shall be only one arbitrator.
- 13.3. The place of arbitration shall be the capital of the country where the carton maker's registered office is located.