

General Terms and Conditions of Sale and Delivery of ECKART Suisse SA, Vétroz

(January 2011)

1. GENERAL

- 1.1 Our General Terms and Conditions of Sale and Delivery only apply in relation to customers which are enterprises, i.e. vis-à-vis natural or legal entities or partnerships with legal capacity that are going about their commercial or independent vocational activity on concluding a legal transaction (hereinafter referred to as "Customer").
- 1.2 In the event that our General Terms and Conditions of Sale and Delivery are introduced into a transaction with the Customer, such General Terms and Conditions of Sale and Delivery shall also apply to all further business relations between the Customer and us unless agreed otherwise in writing.
- 1.3 Our General Terms and Conditions of Sale and Delivery shall apply exclusively. Any terms or conditions of the Customer, which are at variance hereto, or which conflict with our General Terms and Conditions of Sale and Delivery shall only apply if expressly accepted by us in writing.

2. OFFERS, ORDERS, CHARACTERISTICS OF GOODS

- 2.1 Our offers are subject to change and are non-binding unless expressly stated otherwise. They are merely invitations for the Customer to submit a binding order on this basis. A contract is concluded – also in relation to ongoing business transactions – only if the Customer's order is confirmed by us in writing (via fax or e-mail, too) or, if the goods are delivered. Our order confirmation shall determine the content of the contract. In the case of immediate delivery, our order confirmation may be replaced by an invoice.
- 2.2 The obligation to deliver fungibles alone shall not involve any procurement risk. Art. 71 of the Swiss Code of Obligations (OR) is not applicable. Any guarantee, notably in relation to the characteristics and/or durability of goods, shall only be deemed to have been accepted by us if we describe such characteristic as being guaranteed; this also applies to the acceptance of any procurement risk.
- 2.3 In the case of any purchase by the Customer based on samples, we reserve the right for minor variations in quality, colour and finish to occur insofar as such are due to technical or product development reasons. Any such variation shall not constitute a defect.
- 2.4 Details contained in our data sheets or other information material are to be regarded as approximate average values and shall only become a binding element of a contract if such is expressly confirmed by us in writing. Any information concerning the processing and application possibilities of our products, any technical advice and other information are likewise provided on a non-binding basis and to the exclusion of any liability whatsoever unless otherwise expressly agreed.

3. PAYMENT CONDITIONS, SECURITY

- 3.1 Unless otherwise agreed, invoiced amounts are due for payment to one of our bank accounts in the currency denominated in the invoice, without any deductions, within 30 days of the date of invoice. Any further expenses, such as those incurred for freight, insurance, export, transit, import and other permits, as well as for any relevant certificates are to be borne by the Customer. In the case of goods being exported, any costs relating to the transfer or payment of money are to be borne by the Customer to the extent that such arise in the country of the Customer. Upon the expiry of the payment deadline without payment having been received, the Customer is deemed to be in default without any reminder being needed. The default interest shall be charged at a rate of 5 %.
- 3.2 Any acceptance of an order and the performance of delivery may be made subject to requirements of security deposit or prepayment. We are also entitled to demand payment concurrently with the delivery of the goods.
- 3.3 In the event that there is any substantial deterioration in the financial situation of the Customer after concluding the contract, way of filing for insolvency proceedings by the Customer, the commencement of insolvency proceedings, or if there is a cessation of payment, which is not based on any explicit legal rights, or if fulfilment of contract by the Customer appears to be substantially at risk for any other reasons, we may, in addition to our rights under Art. 3.2, withdraw from the contract with immediate effect at any time. Our right to demand the return of any goods that may have already been delivered continues to apply in full even in such cases.
- 3.4 The Customer's right to set-off claims against our claims is herewith explicitly excluded.

4. DELIVERIES, FORCE MAJEURE, DEFAULT, DESPATCH, PACKAGING

- 4.1 Any binding delivery dates or deadlines shall be agreed expressly and in writing. The delivery dates stated by us are only binding if we expressly specify such by the use of additional details such as, for example, "fixed". Any unilateral directions of the Customer are not binding upon us unless we have expressly agreed to such in writing. Any transactions where time is of essence must be expressly described as such and confirmed by us in writing.
- 4.2 In the event that we do not receive deliveries or services from our subcontractors, or do not receive them properly or in time for reasons beyond our control, or in the case of any event of force majeure, we shall promptly inform our customers in writing or in text form. In such case, we are entitled to delay delivery for the period of the hindrance or to withdraw from the contract in whole or in part in relation to the non-performed part provided that we met our obligation to inform our customers and we have not expressly assumed any procurement risk. Force majeure includes strikes, lock-outs, actions of authorities, scarcity of energy and raw materials, transport bottlenecks which are not culpably

caused by us, any hindrances to operations which are not culpably caused by us, for example, as a result of fire, water and machine damage, and any other hindrances which in objective terms have not been culpably caused by us. In the event that a delivery date or delivery deadline is agreed in a binding manner and such an agreed delivery date or delivery deadline is not met as a result of any event under this section 4.2, the Customer may, after the expiry of a subsequent further reasonable deadline of at least 30 days, withdraw from the contract with respect to the non-performed part of such contract, if it would be objectively unreasonable for the Customer to continue to be bound by such a contract. Any further rights to claim on the part of the Customer are excluded in such case.

- 4.3 Any claims or rights of the Customer above and beyond those set out above due to delayed delivery or service provision are herewith expressly excluded. This limitation does not apply in cases of unlawful intent or gross negligence, or if it is in violation of compelling statutory regulations; it does however apply to any unlawful intent or gross negligence on the part of auxiliary persons.
- 4.4 Unless otherwise agreed, any benefit or risk is transferred to the Customer upon the despatch of the products ex works. Any loading and despatching takes place on an uninsured basis at the risk of the Customer ex works or ex distribution warehouse, unless otherwise agreed.
- 4.5 We reserve the right to select the route and means of transport. We shall, however, attempt to take into account the Customer's preferences with regard to route and means of transport; nonetheless, any additional costs resulting therefrom – even if free freight delivery has been agreed – shall be borne by the Customer.
- 4.6 Part deliveries are permitted insofar as such are reasonable for the Customer.
- 4.7 We reserve the right to determine the type of packaging. We shall, however, endeavour to take into account the preferences of the Customer.
- 4.8 The packaging is included in the price and shall not be taken back by us. Any special or small packaging required by the Customer shall be subject to a supplementary charge.
- 4.9 If returnable containers are necessary for the delivery of our products, we shall make such available to the Customer initially at no charge and issue a pro forma invoice, unless expressly agreed otherwise with the Customer. Any returnable containers made available by us shall remain our property and, insofar as such are stored on the business premises of the Customer, are to be clearly labelled as such and kept separate from the property of the Customer. Returnable containers are to be stored correctly and handled so as not to be damaged. In the absence of any express agreement with the Customer to the contrary, the return despatch of such containers shall be to our plant in Vétroz/Switzerland at the Customer's expense. In the case of any failure to return such containers by the Customer within six months of their despatch or any damage to the returnable containers caused by the Customer, the latter shall be obliged to pay the costs detailed in the pro forma invoice within 30 days of being asked to do so in writing.

5. PRICES

- 5.1 Orders placed shall be carried out by us on the basis of the listed prices applying on the respective date of delivery. Depending on the metal commodity exchange price, individual supplementary charges may be raised which are to be agreed separately. All prices shall be subject to the addition of the applicable value-added tax. Delivery prices shall be charged on net price/kg ex works basis unless agreed otherwise.
- 5.2 We are entitled to reasonably increase prices unilaterally in the event of any increase in material procurement or production costs, taxes, wage or salary or social security costs as well as energy costs and costs for environmental protection provided that the time between the conclusion of the contract and delivery exceeds three months. Any increase in terms of the above is excluded insofar as the increase in costs of any of the above-mentioned factors is off-set by a decrease in costs of any of the above factors in relation to the total cost burden for the delivery.

6. RETENTION OF TITLE

- 6.1 All goods supplied by us shall remain our property until such time as payment has been made in full by the Customer. The Customer is not entitled to pass on or sell the goods delivered by us to third parties prior to full payment of the purchase price. We are entitled to have this retention of title entered in the title retention register at the Customer's expense without any further involvement of the Customer.
- 6.2 If the retention of title expressly agreed above is not recognised, or is only recognised under certain preconditions under the law of the country to which the goods are delivered, the Customer shall notify us of such at the latest upon conclusion of the contract. If the laws of such country do not allow for retention of title in respect of the delivered goods, but would allow us other rights serving the purpose of security in the same or, at least, similar manner as retention of title, we hereby declare, and the Customer is in express acceptance and agreement, that we shall use such rights. The Customer undertakes to assist unconditionally with ensuring that all the requirements necessary to this end are met (notably, compliance with formalities).

7. WARRANTY, NOTIFICATION OF DEFECT, PROPRIETARY RIGHTS

- 7.1 The Customer shall inspect the goods for any defects with regard to quantity or quality without undue delay following receipt and notify us, without undue delay but no later than within 14 days of receipt, of any recognisable defects; otherwise the goods shall be deemed to have been accepted.

Any notice of defects as fails to comply with the given deadline shall exclude any right of the Customer whatsoever to claim for breach of contract due to insufficient performance.

Any hidden defects shall be notified by the Customer without undue delay after detection, but no later than within the limitation period set out in section 8.4.

Any complaints notified to us shall include details of the order as well as the invoice and batch numbers. Any notice of defects must always give a detailed description of the defect concerned.

- 7.2 Notice of defects in accordance with section 7.1 must occur in writing. Any notice of defects as fails to comply with the formalities shall also exclude any right of the Customer to assert a claim due to defects.

- 7.3 Our warranty and resultant liability are excluded insofar as the relevant defects and associated damage are not verifiably attributable to defective materials, defective design or defective workmanship for which we are responsible. In particular, any warranty or liability is excluded in the case of the unsuitable or incorrect use of our products by the Customer or third parties, the use of our products after their expiry dates, the incorrect or negligent handling of the products, or insofar as an unsuitable foundation was used or the products are exposed to such chemical, physical, electrochemical or electrical influences which go beyond the average normal levels.

- 7.4 Upon commencement of processing, modifying, connecting or mixing with other goods, the delivered goods are deemed to have been duly accepted as contractually compliant by the Customer in the case of any recognisable defects. The same shall apply in the event that the goods are forwarded from the original destination.

- 7.5 In the event of recognisable defects, the respective goods subject to the given complaint must be left in the transport container so that we are able to check the correctness of the complaint concerned unless we expressly waive the right to such by way of written declaration and the Customer ensures the separate storage of the respective goods subject to the complaint.

- 7.6 If justified defects have been notified in time, we shall at our option remedy the defect free of charge (subsequent improvement) or deliver defect-free goods (replacement delivery). Before sending back any goods, our permission is to be obtained. Any replaced goods shall become our property. If we do not remedy the given defect(s) or fail to provide a replacement delivery for the defective goods by a subsequent reasonable deadline, or if any subsequent improvement or replacement delivery is not successful (whereby we are permitted to make two attempts), or if we refuse to undertake subsequent improvement or replacement delivery or we deem such to be unreasonable for us, the Customer has the right to withdraw from the contract or reduce the price as the Customer sees fit. In the absence of any provision to the contrary set out under section 8 below further claims asserted by the Customer in connection with material defects, irrespective of the legal grounds concerned, are excluded. The right to withdraw from the contract or reduce the price shall not apply in the case of merely insignificant defects.

- 7.7 Unless otherwise agreed, we shall merely be obliged to deliver the goods within Switzerland free from any industrial property rights and copyrights of third parties. Insofar as a third party asserts a justifiable claim due to the infringement of proprietary rights to the goods delivered by us to the Customer, we shall be liable towards the Customer within the period set out in section 8.4 as follows:

- (1) We shall attempt initially at our option and at our expense in relation to the respective deliveries to either acquire a right of use or to modify the goods such that the proprietary rights are not infringed, or to exchange such. If we consider this to be impossible under reasonable conditions, or we fail to eliminate the impact of the third party rights, the Customer shall be entitled at its option to withdraw from the contract or reduce the price. The Customer is not entitled to assert further claims in connection with defects arising from the violation of proprietary rights in the absence of any provision to the contrary set out in section 8 below.
- (2) The Customer is entitled to the rights in connection with this section 7.7 only if it informs us without undue delay in writing as to the claims asserted by the given third party, does not acknowledge any such infringement and allows us to undertake all measures in defence and to conduct any settlement negotiations. If the Customer ceases to use the goods for reasons of minimisation of damage or other important reasons, the Customer shall notify the third party concerned that the cessation of use does not constitute recognition of any alleged infringement of proprietary rights. If, as result of using any goods delivered by us, claims are asserted against the Customer by a third party due to infringement of proprietary rights, the Customer undertakes to notify us as to such without undue delay and to provide us with the opportunity to participate in any resulting legal dispute. The Customer shall support us in conducting any such legal dispute in every respect. The Customer shall refrain from taking any such action as could adversely affect our legal position.

Any rights of the Customer shall be excluded insofar as the Customer is responsible for the infringement of proprietary rights. Any rights of the Customer are further excluded insofar as the proprietary right infringements result from special instructions of the Customer, from any use not envisaged by us, or if such infringements result from a modification of the product by the Customer or from use with other products not delivered by us.

8. LIABILITY, EXCLUSION AND LIMITATION OF LIABILITY

- 8.1 In principle, we shall only be liable for unlawful intent or gross negligence on our part or that of our legal representatives. Our contractual and non-contractual liability for minor negligence is excluded. No liability is assumed for auxiliary persons.
- 8.2 Any liability for purely pecuniary damage, indirect damage and consequential damage is hereby excluded, insofar as this is permitted by law.
- 8.3 In all other cases, the limitation of liability shall not apply insofar as it is not allowed by way of relevant statutory regulations requiring mandatory compliance.
- 8.4 Any claims of the Customer for damages arising from this contractual relationship may be asserted only within a period of one year from the commencement of the statutory limitation period (i.e. from delivery of the goods purchased).
- 8.5 The above provisions shall not constitute a reversal of the burden of proof.

9. JURISDICTION AND APPLICABLE LAW

- 9.1 The place of jurisdiction for any and all disputes arising from this contract shall be Vétroz, Switzerland, or – at our discretion – the general place of jurisdiction of the Customer.
- 9.2 The law of Switzerland shall apply exclusively, to the exclusion of the United Nations Convention on the International Sale of Goods (CISG) as well as any other international state treaties.
- 9.3 If any of our order confirmations include a clause from INCOTERMS, the respective applicable provision of INCOTERMS in the latest version shall apply, unless otherwise stated in our order confirmation.

10. SEVERABILITY CLAUSE

In the event that individual provisions of these General Terms and Conditions of Sale and Delivery, including this section 10, are or become invalid either in full or in part, the validity of the other provisions shall remain unaffected. Any partially or fully invalid provision shall be deemed to have been replaced by a legally valid substitute provision which most closely reflects the originally intended commercial purpose. The same shall apply in the case of any unforeseen gaps or omissions in these General Terms and Conditions of Sale and Delivery.