

ECOMAL UK LIMITED CONDITIONS OF SALE

1. INTERPRETATION

1.1. In these conditions:

- (a) "Customer" means the person or firm who purchases the Goods from the Seller.
- (b) "Seller" means Ecomal UK Limited (registered in England and Wales with Company Number 04286911).
- (c) "Conditions" means the terms and conditions set out in this document.
- (d) "Contract" means the contract for the purchase and the sale of the Goods in accordance with these Conditions.
- (e) "Writing" includes faxes and emails.
- (f) "Goods" means the goods (or any part of them) set out in the Order.
- (g) "Order" means the Customer's order for the Goods sent by the Customer to the Seller requesting the supply of Goods or confirming an oral order for Goods.

1.2. Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time and such reference includes any subordinate legislation made under that statute as amended or re-enacted.

2. BASIS OF CONTRACT

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

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

2.6. A quotation for the Goods given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

2.7. An Order which has been accepted by the Seller may not be cancelled except with the Seller's agreement in writing and on terms that the Customer shall indemnify the Seller in full against all loss, damages, charges and expenses incurred by the Seller as a result of cancellation.

3. GOODS

The Goods are described in the Seller's quotation given to the Customer.

4. PRICE OF THE GOODS

4.1. The price of the Goods shall be at the Seller's quoted price. The Seller may vary its published price list on giving 30 days' notice to the Customer.

4.2. Except as otherwise stated all prices are given by the Seller on an ex works basis from the Seller's premises at Kirchzarten, Germany, and where the Seller agrees to deliver the Goods otherwise than at Kirchzarten, Germany, the Customer shall be liable to pay the Seller's charges for the transport, packaging and insurance of the Goods which shall be invoiced to the Customer.

4.3. The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.4. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce ("Incoterms") being those in force at the date when the Contract is made shall apply to the payment of the price of Goods sold ex-works from Kirchzarten, Germany.

5. TERMS OF PAYMENT

5.1. The Seller may invoice the Customer for the Goods on or at anytime after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Seller may invoice the Customer for the Goods at any time after the Seller has notified the Customer that the Goods are ready for collection or the Seller has to deliver the Goods.

5.2. The Customer shall pay the invoice within 30 days of the date of the invoice, notwithstanding that delivery may not have taken place and title to the Goods has not passed to the Customer. The time for payment is of the essence of the Contract.

5.3. If the Customer fails to make any payment on the due date then, without prejudice to any of the rights or remedies available to the Seller, the Seller shall be entitled to:

- (a) cancel the Contract or suspend any further deliveries to the Customer.
- (b) charge to the Customer interest both before and after Judgement on the amount unpaid at the rate of 2% per annum above HSBC 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).

6. DELIVERY

6.1. Delivery of the Goods shall be made upon an ex-works basis from the Seller's premises at Kirchzarten, Germany. The Customer shall collect the Goods at any time after the Seller has notified the Customer that the Goods are ready for collection, or by the Seller delivering the Goods to such other location as agreed by the Customer and the Seller.

6.2. Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence.

6.3. If the Seller fails to deliver the Goods for any reason other than a Force Majeure Event (as defined in clause 10) or the Customer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, the Seller's liability shall be limited to the costs and expenses incurred by the Customer in obtaining similar goods to replace those not delivered in the cheapest market available, less the price of the Goods.

6.4. If the Customer fails to take delivery of the Goods within 3 days of the Seller notifying the Customer that the Goods are ready then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- (a) store the Goods until actual delivery and charge the Customer the reasonable costs including insurance and storage or
- (b) sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.

6.5. The Customer shall within 7 days of the delivery of the Goods to it give written notice of rejection to the Seller on account of any defect by reason of which the Customer alleges that the Goods delivered do not comply with the warranty and which was apparent on reasonable inspection.

7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the Goods shall pass to the Customer:

(a) in the case of Goods to be delivered at the Seller's premises at Kirchzarten, Germany, at the time when the Seller notifies the Customer that the Goods are available for collection; or

(b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if Customer wrongfully fails to take delivery of the Goods, at the time when the Seller has tendered delivery of the Goods.

7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title to the Goods shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for the Goods and all other goods agreed to be sold by the Seller to the Customer for which payment is then due.

7.3. Until title to the Goods passes to the Customer, the Customer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Customer and third parties and, in the case of tangible proceeds, properly stored protected and insured.

7.4. Until title to the Goods passes to the Customer (and provided the Goods are still in existence and have not been re-sold) the Seller may at anytime require the Customer to deliver up the Goods to the Seller and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and re-possess the Goods.

7.5. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Customer does so all monies owing by the Customer to the Seller shall, without prejudice to any other right or remedy of the Seller forthwith become due and payable.

8. WARRANTIES

8.1. The Seller warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the Goods shall:

- (a) conform in all material respects with their description and specification;
- (b) be free from material defects in material and workmanship.

8.2. Subject to clause 8.3, if:

- (a) the Customer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.1;
- (b) the Seller is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Seller) returns such Goods to the Seller's place of business in the United Kingdom at the Customer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.3. The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:

- (a) the Customer fails to inspect and test the Goods within a period of 7 days from the date of delivery and (where applicable) fails to give notice to the Seller of any non-compliance with the warranty;
- (b) the Customer makes any further use of such Goods after giving notice in accordance with clause 8.2 or 6.5;
- (c) the defect arises because the Customer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

- (d) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Customer;
- (e) the Customer alters or repairs such Goods without the written consent of the Seller;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) the Goods differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
- (h) the Customer fails to pay the price of Goods by the due date for payment under clause 5.2.

8.4. Except as provided in this clause 8, the Seller shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.

8.5. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

9. LIMITATION OF LIABILITY

9.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987.

9.2. Subject to clause 9.1:

- (a) the Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Seller's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10. FORCE MAJEURE

The Seller shall not be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond the Seller's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving the Seller's own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. CUSTOMER'S INSOLVENCY OR INCAPACITY

11.1. If the Customer becomes subject to any of the events listed in clause 11.2, or the Seller reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Seller without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

11.2. For the purposes of clause 11.1, the relevant events are:

- (a) a winding up order or a bankruptcy order is made against the Customer; or
- (b) the Customer passes a resolution or makes a determination for it to be wound up; or
- (c) the Customer has appointed to it an administrator or an administrative receiver; or
- (d) being a partnership, in addition to the above suffers bankruptcy orders being made against all of its partners; or
- (e) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed of the whole or any part of the Customer's assets; or
- (f) the Customer ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
- (h) the Customer ceases, or threatens to cease to carry on business; or
- (i) any event analogous to those described above in this clause 11.2 occurs in relation to the Customer in any jurisdiction in which the Customer is incorporated, resident or carries on business.

11.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

12. INCOTERMS

12.1. In these conditions "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. 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 Conditions, but if there is any conflict between the provisions of "incoterms" and these Conditions the latter shall prevail.

12.2. The provisions of this clause 12 shall (subject to any special terms agreed in writing between the Customer and the Seller) apply to the sale of the Goods to all Customers notwithstanding any other provisions of these Conditions.

12.3. The Customer shall be responsible for complying at its own cost, with any legislation or regulations governing the importation of the Goods into the Country of destination or the payment of any duties thereof, including (without limitation) obtaining import licences and other consents required from time to time.

12.4. Unless otherwise agreed in writing between the Customer and the Seller, the Goods shall be delivered EX WORKS at the Seller's premises at Kirchzarten, Germany.

12.5. The Customer shall be responsible for the arrangement for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

12.6. Payment of all amounts due to the Seller shall be made by bank transfer to the Seller's nominated bank account prior to shipment of the Goods.

13. GENERAL

13.1. Assignment and subcontracting.

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

13.2. Notices.

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

13.3. Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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

13.5. Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.6. Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

14. GOVERNING LAW AND JURISDICTION

14.1. The Contract shall be governed by and construed in all respect in accordance with English law. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract.

14.2. Subject to clause 14.3 the Customer submits to the exclusive jurisdiction of the courts of England and Wales and agrees that, in respect of proceedings in England and Wales and in any other jurisdiction, process may be served on it in the manner specified for notices in clause 13.2.

14.3. Nothing in this clause 14 shall limit the right of the Seller to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the Seller from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

14.4. It is the Customer's obligation to acquaint itself and to comply with all applicable requirements and restrictions imposed by law or by governmental and other authorities or corporations relating to the possession, use, import, export, or resale of the Goods. It is the Customer's obligation to ensure that no Goods are exported or imported in violation of the laws of any jurisdiction into or through which the Goods are transported during the course of delivery to the Customer. Where necessary, the Customer shall inform the Seller at a reasonable time before delivery of any documents which it is necessary for the Seller to provide in order to allow export of the Goods in compliance with the laws of any relevant jurisdiction.

Date: December 2011