



## ECMA TERMS AND CONDITIONS OF SALE

### **1. Scope**

- 1.1. These general ECMA Terms and Conditions of sale apply to all contracts between European carton makers and their customers.
- 1.2. Any variation from these general terms and conditions is only binding when it is explicitly recognised in writing by the carton maker.

### **2. Offers**

- 2.1. Unless stipulated otherwise an offer is considered to be expired in case it is not confirmed by the customer within one 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.
- 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, these costs will be passed on by the carton maker to the customer.
- 2.5. The intellectual property of carton designs remains with the carton maker. Such new designs can not be used by the customer without payment and/or written agreement.
- 2.6. Prices 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 Confirmation, Contracts**

- 3.1. The Carton maker is only bound to supply to the customer when he has confirmed the order in writing or electronically covering all the elements of the request to offer. Such an order confirmation or contract must be sent by the carton maker to the customer within a maximum period of two weeks from the date of the receipt of the order.
- 3.2. The cartons delivery schedule must be clearly specified and is an element of the cost price. Should the customer decide to postpone delivery the carton maker will charge storage costs (pallets per week).
- 3.3. Whenever a contract exceeds the period of 6 months, provisions about quantities and delivery have to be fixed and a raw material price clause has to be included.
- 3.4. Any change in the elements of the order confirmation or the contract caused by the customer give the carton maker the right to amend the prices accordingly.
- 3.5. Prices in order confirmations and contracts are based on the raw material prices valid on the date of the signature of the order confirmation 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. If the customer cancels the order the carton maker will invoice to the customer full costs of the board he reserved for the order plus all additional costs the carton maker 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 confirmation or contract.
- 4.2. If delivery of the total quantity is not effected in the agreed period, the goods and additional costs of storage (pallets per week) will be invoiced by the carton maker to the customer.
- 4.3. Finished goods can not be guaranteed quality wise when stored longer than six months after the date of manufacture.
- 4.4. If the board reserved for the order is not converted within three months of the agreed delivery time the board will be invoiced by the carton maker to the customer and storage charges will be applied (pallets per week).

### **5. Reproduction Rights**

- 5.1. The customer will at all times protect, indemnify and hold harmless the carton maker from and against claims based on infringement of intellectual and/or industrial property rights in the case of 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 awarded by a court of competent jurisdiction with respect to any such claim.
- 5.2. Designs, dies, negatives, plates, printing cylinders, forming tools, films and digital data prepared by the carton maker remain his property even if the customer has financially contributed to their creation.
- 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 year after their latest use.

## **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 can not give rise to complaints.

**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 confirmation. In the absence of a specification in the order confirmation, carton maker is deemed to have performed adequately if quantities do not exceed plus or minus 10 %.

## **7. Packaging**

Packaging specifications must be defined and agreed upon in the order confirmation or contract. Changes in the agreed specifications will be charged separately.

## **8. Acceptance of goods (complaints, liability)**

- 8.1. Any claim concerning consignment must be made in writing within 8 days of the date of delivery. When the claim concerns damage during transport the claim must be made immediately upon receipt of the goods.
- 8.2. 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.
- 8.3. 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.
- 8.4. Any qualitative claim not accepted by the carton maker should be submitted to an arbitration committee.
- 8.5. The liability of the carton maker is limited to the amount of the invoice. He has no liability for consequential losses.
- 8.6. Incorrect storage or use of the goods by customer precludes the liability of the carton maker.
- 8.7. 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**

The carton maker shall retain his right of ownership over goods supplied pending full payment of the relevant invoice.

## **10. Payment**

- 10.1. Payment has to be made within 30 days net of the date of the invoice.
- 10.2. For a different term of payment the carton maker will have to charge to the customer separately.

## **11. Force Majeure**

Force majeure such as strikes, transport delays, uprising, riots, war, etc., which may disrupt supply or performance of the contract releases the carton maker from his supply obligations. If circumstances permit written warning of the carton maker to the customer will take place.

## **12. Dispute**

- 12.1. A dispute between a carton maker and a customer will be submitted to an arbitration committee composed by each party appointing an arbitrator chosen from outside his own personnel, the third arbitrator being appointed by the two arbitrators or in case they could not reach agreement by the president of the competent commercial court in the area where the carton maker is situated. The procedure shall be conducted in accordance with the rules established by the arbitrators.
- 12.2. Where the dispute can not be solved by arbitration, the competent court will either be the court in the place where the registered head office of the carton maker is situated or at the place of establishment of his subsidiary company, where the cartons were manufactured, this at the discretion of the carton maker.
- 12.3. Disputes are subject to the exclusive jurisdiction of the national law of the country in which the court is situated.