

## General Conditions of Sale and Delivery

January 2010

### 1. Definitions

- 1.1 In these General Conditions:
- "Agreement" means an agreement for the supply of Products by ESKA to Purchaser,
  - "General Conditions" means these general conditions of sale and delivery,
  - "ESKA" means Eska Graphic Board USA B.V., having its registered office in Chesapeake, Virginia (USA) or, where applicable, a foreign affiliate of Eska Graphic Board USA B.V.,
  - "Purchaser" means any person, legal or natural, that has entered into or wishes to enter into an Agreement with Eska,
  - "Offer" means any written offer for the supply of Products submitted by ESKA to Purchaser,
  - "Products" means and all other products ESKA markets
- 1.2 If not explicitly otherwise agreed, the interpretation of a delivery condition used in the General Conditions or the Agreement shall be governed by the latest edition of INCOTERMS established by the International Chamber of Commerce.

### 2. Applicability

- 2.1 The General Conditions shall apply to and be part of any Agreement between Eska and Purchaser. These General Conditions also apply to all pre-contractual situations between Eska and Purchaser, including to any Offer made by Eska.
- 2.2 Purchaser's consent (either implicitly or explicitly) with the applicability of General Conditions to an Agreement, shall automatically apply to subsequent Agreements.
- 2.3 Any general conditions put forward by Purchaser shall not apply, are expressly repudiated and shall not be binding, unless and to the extent that they have been specifically accepted by Eska in writing. The General Conditions are drafted in English. In the event of any discrepancies between the English version and a translation, the English version will prevail.
- 2.4 The general conditions of sale of the Association of Dutch Paper and Board Manufacturers as registered at the Registry of the Haarlem District Court on 15 December 1992 will apply in addition to the General Conditions. In the event of discrepancies, the General Conditions will prevail.

### 3. Offers and agreements

- 3.1 All Offers of ESKA shall not be binding upon ESKA and can be revoked at the sole discretion of ESKA, regardless of whether it includes a term for acceptance.
- 3.2 All Orders are not binding on ESKA unless they are confirmed and accepted by ESKA by written Sales Confirmation. ESKA reserves the right to refuse an Order, such at its sole discretion. Unless the Purchaser disputes the Sales Confirmation within 5 (five) days after receipt thereof, the Sales Confirmation shall be binding upon the parties.

### 4. Prices

- 4.1 Unless otherwise agreed, prices agreed upon shall be based on delivery EXW (Eska Graphic Board USA B.V. or Eska Graphic Board B.V. in the Netherlands). Any additional costs as for example incurred by package, freight import duty, installation, insurance premiums etc. as well as the legal value added tax (VAT) are for the Purchaser's account.
- 4.2 Descriptions and prices in quotes are made under reservation and represent only approximations. The Purchaser may not derive any right whatsoever from any mistakes in a quote.
- 4.3 If ESKA is confronted with an increase in its costs, ESKA will be entitled to unilaterally amend the prices and/or any other condition by written notice. The amended price and/or conditions shall apply to every delivery made later than 30 days after the date of such notice.
- 4.4 If the Purchaser does not accept the amended price and or conditions, it will entitled to terminate the pending agreements within 30 days after receipt of such notice. After expiry of this 30 day period, Purchaser is deemed to have accepted the amendment.

### 5. Terms of Payment

- 5.1 All payments hereunder shall be due within thirty (30) days from the date of invoice.
- 5.2 ESKA is at its sole discretion entitled to amend the terms of payment, to request payment prior to delivery and/or to request security for payment, specific terms to be determined by ESKA.
- 5.3 Payments to ESKA shall be made without deduction for taxes, imposts, customs, levies or other withholding ("Tax"). In the event that Purchaser is under a legal obligation to make deductions for Tax, the amounts due and payable by the Purchaser to ESKA shall be increased with such amount that following the deductions, ESKA receives the same amount as it would have received without the imposition of such Tax.
- 5.4 All costs associated with payment such as, but not limited to banking costs, shall be for the account of the Purchaser. ESKA receives the same amount as it would have received without the imposition of such costs.
- 5.5 Save in the event that ESKA has acknowledged a counterclaim expressly and in writing, all payments shall be made without set-off, counterclaim, recourse or other defense.
- 5.6 If payment has not been made in accordance with this article 5 ESKA will charge interest calculated from the due date as set out under article 5.1 hereof, without prior notice being required, at an interest rate 1.5 % per month or part of a month. Interest will be compounded on a yearly basis. This shall not prejudice ESKA's right to seek full compensation for damages incurred as a result of or in connection with violation of payment obligations.



## **6. Delivery**

- 6.1 Unless explicitly otherwise agreed in writing, delivery shall be made EXW (Eska Graphic Board USA B.V. or Eska Graphic Board B.V. in the Netherlands).
- 6.2 Products are transported at Purchaser's expenses and risk, unless otherwise agreed in writing. Purchaser shall co-operate with the delivery of the Products and shall take receipt of the Products as soon as the Products are presented by ESKA. If Purchaser refuses delivery, the day on which Purchaser refuses to take delivery shall constitute the day of delivery.
- 6.3 Purchaser shall be deemed to have refused delivery, if the Products have been presented for delivery, but delivery has proved impossible by reasons attributable to the Purchaser.
- 6.4 If Purchaser refuses delivery, the Products will be stored for the risk of Purchaser and ESKA will be entitled to payment of the purchase price as if delivery would have taken place. The costs of storage and handling will be for the account of Purchaser.
- 6.5 If refusal to take delivery of the Products continues for 4 (four) consecutive week, ESKA will be fully discharged from its obligation to deliver the Products.
- 6.6 ESKA shall deliver the Products with packaging to be determined by ESKA. If the Purchaser requires different packaging this will be charged separately.
- 6.7 If ESKA assumes packaging, loading transport, unloading insurance and any other services, such services shall be invoiced at the agreed rates, or if such rates have not been agreed upon at the rate customarily charged by ESKA for such services or at a rate equal to the actual costs ESKA incurs in relation to these services, whichever is higher.

## **7. Delivery Time**

- 7.1 Agreed delivery times shall be non-binding and ESKA shall not incur any liability in the event that such delivery time is exceeded.
- 7.2 Purchaser may terminate an Agreement by written notice to ESKA in that an agreed delivery time is exceeded and, delivery has not been made within 30 days after a written notice to that effect has been issued by Purchaser. Such termination will only affect orders for which the delivery term was exceeded. The remainder of the Agreement will remain unaffected.
- 7.3 If Purchaser requests a change as to the terms and conditions of delivery, the parties shall agree on good faith on such change. In such event, ESKA shall be entitled to extend the period of delivery accordingly.
- 7.4 The agreed period of delivery shall be based on the circumstances as foreseen at the time of conclusion of the Agreement. In the event that delivery is prevented by unforeseen circumstances ESKA shall be entitled to extension of the period of delivery for the term of the impediment. ESKA shall notify the Purchaser of such impediment forthwith.
- 7.5 If delivery is prevented for a reason other than an unforeseen circumstance of force majeure as set forth under article 11 hereof, ESKA shall only be in default after the Purchaser has served notice upon ESKA granting an reasonable period for delivery, and delivery has not been made within this period.

## **8. Retention of Title**

- 8.1 The title to all Products delivered by ESKA to Purchaser shall remain with ESKA until full and final settlement of all amounts payable under the Agreement or any other agreement between ESKA and Purchaser.
- 8.2 The Purchaser shall be entitled to process the Products under the right of retention only in the course of normal business transactions and at its normal terms. The Purchaser hereby agrees that upon request of ESKA, Purchaser shall undertake to create a pledge as provided in article 3:239 Dutch Civil Code on any claims Purchaser has on its customers as security for the claims for ESKA's claims on Purchaser.
- 8.3 If the authorisation to process the Products shall lapse without prior notice being required, if the Purchaser defaults its payments obligations under the Agreement or any other agreement or in the event that ESKA has reasons to expect that Purchaser will default its payment obligations.
- 8.4 If the authorisation of the Purchaser to process the Products lapses, Purchaser shall be obliged to provide ESKA with information concerning the Products falling under ESKA's right of retention and to return the Products to ESKA, upon first request of ESKA. In order to enforce the claim for return of the Products, ESKA has the right to remove the Products to which ESKA retains title.

## **9. Inspection, complaints and warranty**

- 9.1 Upon delivery of the Products Purchaser shall immediately and as thoroughly as possible inspect the Products. In the event of any discovered defects, Purchaser will make the necessary reservations vis-à-vis the transporter and will notify ESKA forthwith and ultimately within 24 hours after delivery. Failure to comply with these obligations will result in forfeiture of the claim.
- 9.2 Purchaser will be entitled to submit claims relating to defects that could not be discovered upon delivery, to be demonstrated by the Purchaser, until 1 month after delivery was made. After expiry of this limitation period Purchaser shall not submit any further complaints relating to any possible defects in the Product and ESKA may disregard any such complaint.
- 9.3 ESKA does not make warranty of any kind, express or implied, including without limitation, any warranty of merchantability or fitness for particular purpose with respect to the Products sold. The Purchaser must make its own determination of the suitability and completeness of the Products for the intended purpose.
- 9.4 The lodging of a complaint does not discharge Purchaser from its payment obligations towards ESKA.
- 9.5 If a complaint is justified and timely submitted ESKA shall at its discretion replace the defective Products, or take the Products back and credit Purchaser for the purchase price. ESKA is also entitled to grant the Purchaser a reduction on the purchase price corresponding to the extent of the justified claim.

## **10. General Limitation of Liability**

- 10.1 ESKA's liability for direct loss or damage, whether caused by breach of contract, tort or otherwise shall be equal to the invoice value of the respective delivery.
- 10.2 Neither party shall be liable to the other party for any consequential or indirect loss or damage, such as but not limited to, loss of production, loss of revenues or profit, loss of interest, costs of recall, loss resulting from interruption in the operations, loss suffered by third parties, costs of delays or any loss or damage resulting thereof.



## **11. Suspension, rescission, force majeure**

11.1 If the Purchaser in any way commits a breach of contract vis-à-vis ESKA in respect of the performance of any obligation, as well as in the event of a request for suspension of payments, (temporary) suspension of payments, bankruptcy/involuntary liquidation petition, declaration or claim, bankruptcy/involuntary liquidation, liquidation or cessation of (part of) the business of the other party, ESKA shall, without prejudice to the other rights which it has and without any obligation to pay compensation, be entitled, without a notice of default or judicial intervention:

- to suspend the execution of the agreement until payment of all that which the Purchaser owes to ESKA has been sufficiently secured; and/or
- to suspend all of its own potential payment obligations; and/or
- to rescind in whole or in part every agreement with the Purchaser; all of this without prejudice to the Purchaser's obligation to pay for products already delivered and/or services already performed, and without affecting ESKA's other rights, including its rights to compensation.

11.2 In the event Purchaser is impeded from executing the agreement due to force majeure, ESKA shall be entitled to suspend the execution of the agreement without judicial intervention or to rescind the agreement in whole or in part, without being obliged to pay any compensation.

11.3 There is an instance of force majeure in the case of a circumstance beyond ESKA's control which results in performance of the agreement being permanently or temporarily impeded, as well as, insofar as not already included in this, the case of war, threat of war, civil war, riots, strikes, fire and every other disruption in the business of ESKA or its suppliers. There is also an instance of force majeure if a supplier from whom ESKA purchases products with regard to the execution of the agreement with the Purchaser remains in default as to timely and/or proper delivery.

## **12. Intellectual and industrial property rights**

12.1 ESKA retains all intellectual and industrial property rights with respect to quotes made by it, as well as with respect to drawings, software, descriptions, models and the like produced or provided by it, as well as with respect to all information contained in or forming the basis for these, unless otherwise agreed upon.

12.2 The Purchaser guarantees that the items referred to in Article 12.1 shall not be reproduced, disclosed, stored or otherwise used, except as necessary to execute the agreement and with ESKA's written permission.

12.3 All designations, logos, labels and the like, whether protected by intellectual or industrial property rights or not, which are found on, in or at the products delivered by ESKA, may not be changed by the Purchaser, removed from the products, copied or used for other products, except with ESKA's permission.

## **13. Applicable law and Jurisdiction**

13.1 Dutch law is exclusively applicable to these General Conditions, as well as to all Offers and Agreements to which these General Conditions apply. German law is applicable to Article 8.6 - 8.13 and United Kingdom law is applicable to Article 8.15. The Vienna Sales Convention is not applicable.

13.2 If the Purchaser has its principle place of business in one of the member states of the European Union, any dispute arising out or in connection with an Agreement shall in first instance exclusively be submitted to the competent courts in Groningen, the Netherlands.

13.3 If the Purchaser does not have its principal place of business in a member state of the European Union, any dispute arising in connection with an Agreement, shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The place of arbitration shall be Amsterdam, the Netherlands and the arbitral procedure shall be conducted in the English language.

## **14. Data of the Purchaser**

14.1 ESKA is entitled to register personal data of the Purchaser by electronic data processing.

