

## General Conditions of Sale and Delivery

January 2018

### 1. Definitions

- 1.1 In these General Conditions:
- a. "Agreement" means an agreement for the supply of Products by ESKA to Purchaser,
  - b. "General Conditions" means these general conditions of sale and delivery,
  - c. "ESKA" means Eska USA B.V., having its registered office in Chesapeake, Virginia (USA), or, where applicable, a foreign affiliate of Eska USA B.V.,
  - d. "Purchaser" means any person, legal or natural, that has entered into or wishes to enter into an Agreement with Eska,
  - e. "Offer" means any written offer for the supply of Products submitted by ESKA to Purchaser,
  - f. "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 (2010) as adopted by the International Chamber of Commerce. If the INCOTERMS are in conflict with the Agreement and/or the General Conditions, the Agreement and/or the General Conditions shall prevail. The Agreement shall prevail over the General Conditions.

### 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 implicit or explicit) to 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.

### 3. Offers and agreements

- 3.1 All Offers of ESKA are free of obligation and shall therefore not be binding upon ESKA, and can be revoked at the sole discretion of ESKA, irrespective of whether an acceptance period applies to the Offer.
- 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 as its sole discretion.

### 4. Prices

- 4.1 Unless otherwise agreed, prices agreed upon shall be based on delivery EXW (Eska USA B.V. or Eska B.V. in the Netherlands). Any additional costs as for example incurred in relation to special packaging, freight import duties, 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 quote.
- 4.3 If ESKA is confronted with an increase in its costs, ESKA will be entitled to unilaterally adjust the prices and/or amend any other condition by written notice.

### 5. Terms of Payment

- 5.1 All payments hereunder shall be due within thirty (30) days from the invoice date, unless a different payment term has been agreed. Objections to the amount of the invoice shall not suspend the payment obligation.
- 5.2 ESKA is at its sole discretion entitled to amend the payment term, 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, or the counterclaim has been established at law, all payments shall be made without set-off, counterclaim, recourse or other defence.
- 5.6 After the due date of the invoice, Purchaser shall be in default and Eska will be entitled to charge contractual interest at a rate of 1.5% per month. The interest on the amount due shall be charged from the time Purchaser is in default until the time of payment in full, whereby part of a month will be considered a whole month.



## 6. Delivery

- 6.1 Unless explicitly otherwise agreed in writing, delivery shall be made EXW (Eska USA B.V. or Eska B.V. in the Netherlands).
- 6.2 Products are transported at Purchaser's expense 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 weeks, ESKA will be fully discharged from its obligation to deliver the Products. In that case, Purchaser shall be obliged to compensate the loss sustained by ESKA.
- 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 responsibility for special packaging, storage for the purpose of transport, cargo 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 be liable in the event that such delivery time is exceeded.
- 7.2 Purchaser may terminate an Agreement by written notice to ESKA if agreed delivery time is exceeded and, delivery has not been made within 30 days after Purchaser gave written notice to that effect. Such termination will only affect orders for which the delivery term was exceeded.
- 7.3 Should the Agreement be amended, 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 force majeure within the meaning of Article 11.3, ESKA shall be entitled to extend the delivery period as long as the force majeure continues. ESKA shall notify the Purchaser of such impediment forthwith. As long as force majeure exists on the part of ESKA within the meaning of article 11.3 of these Conditions, there shall not (cannot) be any question of default on the part of ESKA.
- 7.5 If delivery is prevented for a reason other than force majeure as referred to in articles 7.4 and 11.3 of these Conditions, there will be no question of default on the part of ESKA, other than after Purchaser has given written notice to ESKA in which a reasonable period is allowed as yet to deliver. ESKA will be in default only if delivery has not been made within this period.

- 7.6 In case of force majeure or another unforeseen circumstance, ESKA shall be entitled to terminate this Agreement, without Purchaser being entitled to any compensation.

## 8. Retention of Title

- 8.1 The title to all Products delivered by ESKA to Purchaser shall remain vested in ESKA until full and final settlement of all amounts payable under or arising from the Agreement or any other agreement between ESKA and Purchaser.
- 8.2 Purchaser may process the Products subject to retention of title only in the course of normal business operations and on its normal terms.
- 8.3 Purchaser hereby agrees that at the request of ESKA, Purchaser shall undertake to create a pledge as provided in Section 3:239 Dutch Civil Code on any claims Purchaser has against third parties as security for ESKA's claims against Purchaser. Purchaser must provide additional security immediately at ESKA's request.
- 8.4 The authorisation to sell, encumber or process the Products shall lapse without prior notice being required if the Purchaser does not promptly comply with its payments obligations under the Agreement or any other agreement, or in the event that ESKA has reasons to expect that Purchaser will not comply with its payment obligations.
- 8.5 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, immediately at ESKA's request. In order to enforce the claim for return of the Products, ESKA has the right to remove the Products to which ESKA retains title.
- 8.6 If the Purchaser has its registered office in Germany, the retention of title will be governed by the following conditions in articles 8.8 to 8.15, instead of articles 8.1 to 8.5.
- 8.7 If the Purchaser has its registered office in England, Wales, Scotland or Northern Ireland, the retention of title will be governed by the following conditions in article 8.16, instead of articles 8.1 to 8.15.
- 8.8 Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die ESKA aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für ESKA her und verwahrt sie für ESKA. Hieraus erwachsen ihm keine Ansprüche gegen ESKA.
- 8.9 Vorbehaltsware mit Waren anderen Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwirbt ESKA zusammen mit diesen Lieferanten - unter Ausschluss eines Miteigentumserwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei ESKAS Miteigentumsanteil dem Verhältnis des Rechnungswertes ESKAS Vorbehaltsware zu dem Gesamtrechnungswert aller mitarbeiteten Vorbehaltswaren.
- 8.10 Der Abnehmer tritt jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus die gegenwärtigen und künftigen Warenlieferungen der ESKA mit sämtliche Nebenrechten im Umfang der Eigentumsanteil der ESKA zur Sicherung an uns ab.



- 8.11 Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages der Rechnung dem ESKA für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an ESKA ordnungsgemäss nachkommt, darf er über die in der Eigentum der ESKA stehende Ware im ordentlichen Geschäftsgang verfügen und die an ESKA abgetretenen Forderungen selbst einziehen.
- 8.12 Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers ist ESKA berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.
- 8.13 Scheck-/ Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.
- 8.14 Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschliesslich deutsches Recht.
- 8.15 German Law will be applicable to the conditions of retention of title as laid down in article 8.8 until 8.14 above.
- 8.16 Notwithstanding delivery and the passing of risk, property in and title to the Products shall remain vested in ESKA until ESKA has received payment of the full price of  
a) all Products subject to the Agreement, and  
b) all other products supplied by ESKA to the Purchaser under any agreement whatsoever.  
Payment of the full price shall include, without limitation, the amount of interest or other sum payable under the terms of this and all other agreements between ESKA and the Purchaser.

## 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 visible defects, Purchaser must make the necessary reservations vis-à-vis the transporter [on the CMR form] and Purchaser must notify ESKA forthwith of the defects, within 24 hours after delivery at the latest. Failure to comply with these obligations will result in lapse of the Purchaser's claim.
- 9.2 Purchaser will be entitled to submit claims relating to defects that were not visible, which could not reasonably be discovered upon delivery, to be demonstrated by the Purchaser, up to 6 months after delivery. After expiry of this time limit, Purchaser will not be able to submit any more complaints about possible defects in the Product, and ESKA may disregard any such complaint.
- 9.3 ESKA does not give any explicit or implicit warranty of any kind, including without limitation, any warranty of merchantability or fitness for particular purpose with respect to the Products sold. The Purchaser must take its own decision on the suitability and completeness of the Products for the intended purpose.
- 9.4 The lodging of a complaint shall not discharge Purchaser from its payment obligations towards ESKA.
- 9.5 If a complaint is justified and timely submitted, ESKA shall at its discretion repair, replace or take back the defective Products and refund the purchase price to Purchaser. ESKA will also be 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 maximum liability for direct loss or damage, whether caused by breach of contract, tort or otherwise, shall be limited to the invoice value of the respective defective Product.
- 10.2 Neither party shall be liable to the other party for any consequential or indirect loss or damage, including but not limited to, loss of production, loss of revenues or profit, loss of interest, costs of recall, loss resulting from interruption of business operations, loss suffered by third parties, costs of delays or any loss or damage resulting therefrom.

## 11. Suspension, termination, force majeure

- 11.1 If the Purchaser in any way fails to perform its obligations towards ESKA, as well as in the event a well-founded fear on the part of ESKA that the Purchaser will breach the performance of its obligations, such as in the event of an application for suspension or temporary suspension of payments, winding-up petition or discontinuation of all or part of the other party's business, 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 performance of the agreement until payment of all that which the Purchaser owes to ESKA has been sufficiently secured; and/or
  - to suspend any and all of its own payment obligations; and/or
  - to take back the Products it has delivered, or have them taken back;
  - to terminate 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 right to compensation.
- 11.2 In the event that Purchaser is prevented from performing the agreement by force majeure, ESKA shall be entitled to suspend performance of the agreement without judicial intervention or to terminate the agreement in whole or in part, without being obliged to pay 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, in 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 in connection with performing the agreement with the Purchaser remains in default of timely and/or proper delivery.

## 12. Intellectual and industrial property rights

- 12.1 ESKA shall retain all intellectual and industrial property rights with respect to Offers made by it, as well as with respect to drawings, software, descriptions, designs and the like which it has produced or provided, as well as with respect to all information contained therein and all information on which these are based, unless otherwise agreed.
- 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 perform 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 with the products delivered by ESKA, may not be changed, removed from the products, copied or used for other products by the Purchaser, 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 Articles 8.8 - 8.14 and United Kingdom law is applicable to Article 8.16. The Vienna Sales Convention is not applicable and is expressly excluded by the parties.

13.2 Any disputes arising from or in connection with an Agreement shall be brought in the first instance exclusively before the competent court in Groningen, the Netherlands.

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

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

