NESPAK S.P.A.

GENERAL TERMS AND CONDITIONS OF SALE



The following general terms and conditions of sale ("GTCS") are the cornerstone of the relationships between Nespak SPA ("Seller") and buyer ("Buyer"). Any purchase order ("PO") placed by Buyer with Seller implies Buyer's full acceptance of these GTCS, which prevail over all Buyer's documents including its general terms and conditions of purchase. Seller shall not be deemed to accept such other terms or conditions or to waive any of these GTCS by failing to object to provisions appearing in, incorporated by, referenced in, or attached to Buyer's PO and/or in any other Buyer's documents. These GTCS constitutes the full and final agreement between Buyer and Seller in relation to the sale of Seller's goods ("Goods"), except as expressly otherwise agreed upon by Seller and Buyer. Silence, acceptance, payment, resale or use of the Goods by Buyer shall constitute full and complete acceptance of these GTCS, which Buyer acknowledges knowing before to place any PO with Seller.

1. QUOTATION AND ORDER

Seller's quotation is valid for a maximum of 45 calendar days following its date of issuance. Every PO placed by Buyer is firm and definitive, except if otherwise agreed in writing by Seller. Buyer's PO shall be binding on Seller only from (i) its express written acknowledgement or (ii) the delivery of the Goods; in case of modification by Seller only information stated in the acknowledgment issued by Seller, if any, is binding. Seller reserves the right to condition the effectiveness of a PO upon (i) the receipt of the agreed down payment; and/or (ii) the receipt of the contractually compliant documentary credit; and/or (iii) obtaining export-credit insurance coverage. If any of the conditions stated in the acknowledgement of PO are not fulfilled within 45 days from the PO acceptance date by Seller, such PO shall be deemed null and void.

2. DELIVERY

2.1 Shipping Terms: Goods shall be delivered EXW NESPAK, Massa Lombarda - Seller's premises (ICC Incoterms® 2010, "Incoterms"), truck unloaded. Seller may deliver Goods CPT (Incoterms) if delivery exceeds €2000 (tax excluded). Goods are delivered in multiples of packing unit, without mixing or division.

2.2 Time of delivery and Quantities: Time of delivery is best Seller's approximation. Delay, or variation in quantity of more or less 5%, cannot justify cancellation of PO, refusal to make payment of Goods, or request of indemnity or liquidated damages. Seller reserves the right to make delivery by installment with a relevant invoice.

2.3 Risks: When Buyer takes over Goods at Seller's premises, it shall carry out loading at its own risks, even if Seller assists. Risk of loss of or damage to Goods shall pass to Buyer upon dispatch at Seller's premises, even in case of carriage paid delivery. Buyer shall carry-out inspection of Goods upon arrival. In case of damage or loss to Goods Buyer shall issue a claim to the carrier precisely describing said damage on the document presented to Buyer by the carrier and keep a copy of such document. Buyer shall then immediately (not to exceed 3 days) confirm said claim to the carrier by a registered letter with acknowledgement of receipt, with a copy to be provided to Seller, as otherwise any action shall be barred. If Seller's deliveries are made on exchangeable European pallets, and exchange does not take place for any whatsoever reason, the pallets shall be invoiced to Buyer.

2.4 Return: No return is allowed except with Seller's prior written consent. Returned Goods are credited only through a credit note valid for future PO.

3. PRICE – PAYMENT

3.1 Seller reserves the right to modify its quotations at any time, after prior notice to Buyer as to the date of effectiveness of new prices, especially in case of change in raw materials and/or energy price. Except in case of prior agreed price, Seller's price list applicable as of the date of PO shall apply.

3.2 Prices are stated in Euros, for an EXW Seller's premises (Incoterms) delivery and include standard packaging as used by Seller for land transport. Sea and air transport requires a price increase as non-standard packaging shall be used. All prices are exclusive of (i) any and all taxes, tariffs, duties and levies including Value Added Tax (VAT) and any other taxes, and (ii) transportation and insurance costs. If any law or regulation comes into force after the date of Seller's quotation which increases the cost of performance, price shall be adjusted accordingly. For European Union transactions, Buyer shall provide Seller with all information and documents which could be required for VAT purposes and failing to do so, shall indemnify and hold harmless Seller for any liability for tax in connection with the sale, collection or withholding thereof of Goods.

3.3 Goods are invoiced upon delivery. Unless otherwise agreed, all invoices shall be paid cash on delivery. If Buyer defaults in any payment, interest for late payment shall *ipso facto* apply pursuant to legislative decree dated 9.10.2002 no. 231. No discount shall be granted for anticipated payment.

3.4 Payment shall be made with no deduction, set-off, withholding or other charge of any kind whatsoever, regardless of any dispute, discussion or litigation between Buyer and Seller. Buyer's default in payment of any invoice on due date automatically makes any and all outstanding amounts, even those not yet due, immediately payable. Seller is entitled to suspend all other PO. Any unpaid invoice disqualifies the right to discount, credit or refund on the turnover of the relevant year, if any.

4. RESERVATION OF TITLE

Title to Goods shall pass to Buyer upon receipt of full payment (principal and interest). Seller and Buyer expressly agree Seller may exercise its right on any and all Goods in possession of Buyer, whether ascertained or not, and contractually deemed to be the unpaid Goods. Buyer shall fully assist Seller in taking possession of the Goods and/or using Buyer's right to claim from the third-party purchaser for the part of the price that is not yet paid to Buyer. Buyer shall inform any relevant third party of the existence of a reservation of title if a seizure of the Goods or similar measures occur or are threatening and inform Seller forthwith.

5. WARRANTY

Seller warrants that the Goods comply with Seller's specifications and/or will be free from material defects in design and workmanship. As the sole remedy under warranty, Seller shall replace, at its own costs and expenses, the Goods which are shown to be defective by Buyer, under the conditions of the initial PO. **No warranty as to performance, merchantability and fitness for a particular purpose, or arising from any course of dealing or usage of trade is granted**.

Buyer's claim, showing that the Goods are defective for reason directly attributable to Seller, shall be notified to Seller in writing through registered letter with acknowledgment of receipt **within two (2) months**, or **eight (8) days** in case obvious defect, all from delivery, as otherwise claim is deemed to be barred.

The warranties and remedies are not enforceable and shall not apply to Goods which have been sold or used for any reason whatsoever, or were not properly received, handled, stored or if the defects are due, in whole or in part, to instruction, raw material, components or equipment supplied and/or specified by Buyer.

6. LIABILITY

6.1 NOTWITHSTANDING ANYTHING WHICH MAY READ TO THE CONTRARY, SELLER, ITS SUBCONTRACTORS AND RESPECTIVE INSURERS SHALL NOT BE LIABLE FOR LOSS OR DAMAGE SUCH AS RECALL OF GOODS, LOSS OF USE OF GOODS, PRODUCTS OR EQUIPMENT, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF EXPECTED EARNINGS, LOSS OF GOODWILL, NOR FOR DAMAGE TO BRAND IMAGE, NOR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR NOT AT THE TIME THE PO IS PLACED.

6.2 THE TOTAL CUMULATIVE AMOUNT, FOR WHICH SELLER, ITS SUBCONTRACTORS, AND THEIR RESPECTIVE INSURERS, SHALL BE LIABLE (INCLUDING WARRANTIES) SHALL NOT EXCEED THE AMOUNT, EXCLUDING TAXES, RECEIVED BY SELLER PURSUANT TO THE PO UNDER WHICH THE CLAIM ARISES, EXCEPT IN CASE OF WILLFUL MISCONDUCT *("DOL")* OR GROSS NEGLIGENCE.

6.3 Buyer shall defend, indemnify or hold harmless Seller, its subcontractors and their respective insurers for any amount above the limit set forth in 6.2 and/or for damages set forth in 6.1, above.

6.4 If penalties are specified in a PO, they shall be construed as liquidated damages i.e. exclusive of and in lieu of all other actions or claims resulting from non-achievement of PO's requirements and shall not exceed a total and cumulative amount equivalent to 5% of PO's value, excluding taxes.

6.5 In any case, Buyer is not entitled to introduce any claim at any time more than **twelve (12) months** from Goods delivery.

7. FORCE MAJEURE

Seller shall not be liable for any default to perform any of its obligations under a PO if such performance is delayed by a force majeure event ("FME"). FME shall mean any event beyond Seller's reasonable control such as: war, act of terrorism, epidemic or quarantine restrictions, fire, storm, flood, earthquake or other acts of God, strikes, interruption or delay in transport of the same from causes listed herein as force majeure, work stoppages due to energy or raw material shortage or equipment breakdown, riot, sabotage, embargo, any combination of workmen, interference by civil authorities, acts, regulations or orders of any governmental authority (including delay or failure to issue licenses, permits or authorizations of any kind whatsoever), Buyer's acts or omissions. Time of delivery indicated in the PO shall automatically be postponed by the force majeure period. If the FME lasts for more than 6 months, then each party may terminate the PO *ipso jure* without any liability to the other party. Articles 1256, 1258 and 1461 of the Italian civil code shall apply.

8. DOCUMENTS - INTELLECTUAL PROPERTY - CONFIDENTIALITY

8.1 Any and all documents and information, like specifications contained in Seller's catalogues or website, are only indicative, and none of these shall be deemed binding on Seller. Seller is entitled to modify any time the design, presentation and identification of Goods without prior notice to Buyer.

8.2 Seller has a proprietary interest in all drawings, blue-prints, specifications, documents, information or know-how which may be provided pursuant to a PO as well as in any know-how, improvement, discovery or invention which may be made, developed or conceived in the performance of a PO or which may arise or result therefrom ("IP"). Buyer shall maintain all IP in confidence and shall require the same confidence from his employees, agents, suppliers or subcontractors. Buyer shall not use, copy, reproduce, release, disclose or publish in any manner, or allow access to or possession of any IP to any third party without Seller's prior written consent, and shall not buy from third party products which may be construed as counterfeiting Seller's IP. All IP remains vested in Seller and shall be deemed to have been loaned to Buyer only for the purpose of performing the PO.

8.3 Seller shall with respect to the regular sale and use of Goods designed by Seller indemnify Buyer from all damages and costs awarded to a third party by a relevant court resulting from any claim that such Goods constitute an infringement of intellectual property rights ("IPR") valid in the Seller's territory of manufacture; provided that (i) Seller is promptly notified in writing of such claim, given authority, information and assistance for the defense of said suit or proceeding and (ii) such claim does not arise as a result of any use of such Goods in association or combination with any material, equipment, device or item not supplied by Seller or modification of the Goods. In case the Goods is held in any such suit or proceeding to constitute an infringement, in whole or in part, and its use is enjoined, Seller shall at its option: (i) procure Buyer the right to continue using said Goods or part thereof; (ii) replace it with substantially equivalent non-infringing Goods; or (iii) modify it so it becomes non-infringing. Seller's defense and indemnity, as provided herein, shall constitute complete fulfilment of all its obligations or liabilities to Buyer with respect to any IPR infringement and shall constitute Buyer's exclusive remedy with respect thereto.

8.4 Buyer shall fully defend, indemnify and hold Seller and its suppliers harmless from any and all costs, expenses, damages, judgments or losses of any kind, including reasonable attorney's fees, arising from any claim, suit or demand that any Goods manufactured by Seller according to design, specifications, or instructions of Buyer (including its subcontractors) infringe any IPR.

9. APPLICABLE LAW AND JURISDICTION

THE PO IS GOVERNED BY THE SUBSTANTIVE LAWS OF ITALY EXCLUDING ITS RULES FOR CONFLICTS OF LAW OR CONNEXITY AND FURTHER EXCLUDING THE UN CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS. ANY DISPUTE ARISING OUT OR RELATING TO PO SHALL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF SELLER'S RELEVANT COURTS OF RAVENNA, ITALY, EVEN IN CASE OF SUMMARY PROCEEDINGS OR PLURALITY OF DEFENDANTS.

28/06/2017