ecospenser®

General Sales Conditions Ecospenser Trading BV

1. Scope of applications

These general conditions shall apply to any offer, quotation, order, delivery, or agreement between Ecospenser Trading ('**Seller**') and its customer ('**Buyer**').
If there is any conflict between these general conditions and a separate written agreement between the Seller and the Buyer, the provisions of the separate written agreement shall prevail. These general conditions remain applicable with regard to the non-conflicting provisions.
By accepting these general conditions, the Buyer fully waives the application of its own general conditions.
Any amendment to these general conditions and/or deviating own conditions made or proposed by the Buyer, shall only apply if the Seller has explicitly accepted them in writing.

2. Quotations and orders

The Seller's prices, quotations, and contract proposals are without obligation and as such do not bind the Seller.
Orders placed by the Buyer are always binding on the Buyer. An order binds the Seller only after its written acceptance or execution of the order. The Seller reserves the right to refuse orders without having to justify such decision.
The Buyer cannot transfer the order to a third party without the Seller's prior written consent.
Sample properties are only binding if the parties have explicitly agreed that they are representative.

3. Prices

The Seller's prices are EXW (Incoterms® 2020) prices, including transport packaging, unless the parties have agreed otherwise in writing.
The Buyer must pay all taxes, bank charges, duties, and levies, of whatever nature, relating to the supplied products or their transport, including new taxes, duties, and levies introduced after the parties conclude the agreement.
The Seller reserves the right to adjust prices based on increased raw material, energy, and transport costs, subject to submission of the necessary supporting documents.

4. Payment terms

All invoices are payable at the Seller's registered office in the currency stated on the invoice. Unless the parties have agreed otherwise in writing, the Seller's invoices are payable within thirty (30) days of the invoice date.
If the Buyer fails to comply with the above payment terms or if circumstances emerge that cause doubt about the Buyer's solvency, the Seller may: (i) demand prior payment for future deliveries; (ii) suspend execution of the agreement until payment has been made and/or securities have been provided by the Buyer; or (iii) immediately terminate the agreement without the Buyer being entitled to any compensation. Set-off by the Buyer is expressly excluded.
In the event of total or partial non-payment of an invoice on the due date, the Buyer shall automatically and without prior notice of default owe default interest on the outstanding invoice amount at the statutory rate plus 5%, but at no less than 8.50% per year. Furthermore, the Buyer shall automatically and without prior notice of default owe a fixed compensation of 10% of the outstanding invoice amount, subject to a minimum of €250, without prejudice of the right to claim, if existing, for more damages.
If the Buyer does not pay an invoice by the due date, all other invoices not yet due shall automatically and without prior notice become payable.
Any protest regarding the redaction of the invoices must be notified in writing to the Seller within 7 days of the invoice date. Protesting an invoice does not suspend the Buyer's payment obligation.

5. Delivery and acceptance

Unless expressly agreed otherwise, all deliveries shall be made EXW at Bilten, Switzerland (Incoterms® 2020).
Delivery periods as communicated by the Seller are indicative. If there is an abnormal delay in delivery, the Buyer is entitled to cancel the order in writing, provided that the Seller has not delivered within one (1) month after receipt of a notice of default from the Buyer. The Buyer expressly waives any other possible remedy, particularly the granting of any form of compensation.
The Seller is entitled to make partial deliveries. The Buyer is not allowed to refuse such a delivery and is not entitled to compensation because of such a delivery.
If the Buyer fails to collect the delivery, the Seller is entitled to claim payment from the Buyer from the moment of delivery, automatically and without prior notice of default, for the storage of the products equal to €8.50 per m^2 for each started month. After a written notice of default and expiry of the period stipulated in the notice of default, the Seller is allowed to destroy the products at the Buyer's expense or no longer keep them available for the Buyer.
The Buyer agrees to accept delivery of the supplied products immediately and to examine whether the supplied products correspond with the agreed technical specifications and quantity. Any visible defects in the supplied products must immediately, and no later than 5 working days after delivery, be notified to the Seller including a detailed description of the shortcomings observed.
Complaints due to visible defects are valid only and shall be investigated only if the complaint has been reported timely to the Seller and the Buyer has not yet processed or resold the supplied products.
At the risk of otherwise forfeiting all recourse, the Buyer must immediately, and no later than eight days after their discovery, notify the Seller in writing of any hidden defects, accompanied by a detailed report and representative samples of the defective products. The Seller's liability for any hidden defects is limited to defects manifested within six months of delivery.
The above complaints do not suspend the Buyer's payment obligation for products that are not the subject of the complaint.

6. Warranties and liability

Unless explicitly agreed otherwise between the parties, the Seller shall not be deemed to have knowledge of or to have considered the specific use that the Buyer shall make of the delivered products. Therefore, the Seller cannot be held liable if the delivered products do not correspond to the Buyer's intentions or are not fit for the use to which they are put by the Buyer. Only the Buyer is liable for the specific use that he makes of the delivered products and/or the purposes for which he uses these products. The Seller warrants that the supplied products shall fully comply with the predefined product requirements and product specifications ('Ecospenser Product Data Sheets'), as regularly updated and communicated to the Buyer, or any other product specification agreed in writing. If the products do not comply with the above warranty, the Seller's liability is limited to the sole replacement of the defective products or issuing a credit note for an amount limited to the value of the defective products, at the Seller's discretion. By accepting these general conditions, the Buyer expressly waives his right to claim any other form of compensation. To the fullest extent permitted by law, the Seller is not liable for, nor obliged to compensate, any immaterial, indirect, or consequential damage, including, but not limited to: loss of profit, loss of turnover, loss of income, production limitations, administration or personnel costs, an increase in overheads, loss of customers, or third-party claims.

7. Raw materials and recycled raw materials

In the event that the raw materials used to manufacture the products are supplied by the Buyer or purchased on the Buyer's instructions ('soft' or 'hard-tolling'), the Seller shall not be responsible for the choice or quality of the raw materials, nor liable for any resulting defects in the products it supplies. Recycled PET raw materials are only used to manufacture the products at the explicit request and/or on the instructions of the Buyer. The Buyer explicitly acknowledges that he is aware that recycled PET raw materials are subject to different conditions and warranties compared to virgin PET raw materials. If the Seller demonstrates that there is no or limited availability on the market of recycled PET raw materials of a sufficient quality to ensure the agreed quality and food-safety standards of the products, the Seller reserves the right to substitute at any time the requested recycled PET raw materials with virgin PET raw materials, or to adjust the requested percentage of recycled PET raw materials. In view thereof the parties shall agree on implementing the envisaged measures in consultation and good faith. If no consensus can be reached, the Seller shall be entitled to fully or partially suspend or cancel all future deliveries of products to the Buyer. Such suspension or cancellation does not entitle the Buyer to any compensation and shall not be considered breach of contract by the Seller.

8. Return packaging

At the Seller's request, the Buyer must store and keep all transport packaging and other transport aids that are in good condition and reusable by the Seller in a suitable place, in accordance with the return procedure as communicated by the Seller. The Seller shall arrange for the collection of these items by full truck loads.

9. Retention of title

Ownership of the delivered products shall only be transferred to the Buyer after the agreed price, costs, interest, and any compensation have been paid. Notwithstanding the retention of title, the Buyer shall bear the full risks of loss or destruction of the supplied products from the moment they are delivered in accordance with Article 5 of these general conditions.
Upon simple request of the Seller, the Buyer must return the products that are unpaid on due date at the Buyer's own expense.
Until ownership of the supplied products has been effectively transferred to the Buyer, the Buyer is expressly forbidden to use the supplied products as a means of payment, or to pledge or encumber them with any other security right.
The Buyer has a duty of care with respect to the products subject to the retention of title and must store and keep them in perfect condition and in a suitable place under the highest standards and safety requirements customary in the industry or in accordance with the Seller's instructions.

10. Force majeure

If force majeure occurs, the Seller shall be entitled to cancel or postpone a delivery without being obliged to pay any compensation.
Force majeure shall mean any situation in which performing the agreement is fully or partially, permanently or temporarily, prevented by circumstances beyond the Seller's control, even if this circumstance could have been foreseen at the time the agreement was concluded.
Force majeure cases shall include, without being limited thereto: depletion of stock, delays in deliveries or failures to deliver by suppliers, destruction of goods because of accidents, machinery breakdowns, strikes or lock-outs, fires, riots, war, epidemics, floods, high absenteeism because of illness, electrical, computer, internet or telecommunication failures, cybercrime, decisions or interventions by the authorities (including the refusal or cancellation of a permit or licence), fuel shortages, and errors or delays attributable to third parties.
The Seller shall make all reasonable efforts to limit the consequences of a force majeure situation.
Since the Buyer's obligation is essentially a payment obligation, force majeure on the part of the Buyer is hereby expressly excluded.

11. Confidentiality

Without Seller's prior written consent, the Buyer must refrain from press releases or other public statements relating to the agreement or related aspects (unless required by law).
The Buyer undertakes not to disclose or distribute any confidential information belonging to or relating to the Seller or its affiliated companies to persons other than those who reasonably need the confidential information to execute the agreement between the Seller and the Buyer (i.e. on a need-to-know basis) and not to use the confidential information other than in the context of executing his agreement with the Seller.
Confidential information is all information and documents exchanged between the Seller and the Buyer, whether orally or in writing, regardless of the nature of the information or documents and whether such information or documents have been designated as confidential. The communication of confidential information and/or delivery of products does not cause any transfer of intellectual property rights (neither licence nor ownership). The Buyer must pay the Seller a compensation of €10,000 for each established breach, without prejudice to the Seller's right to claim additional compensation subject to proof it has actually incurred higher damage.

12. Processing of personal data

The Buyer's personal data shall only be processed if necessary to perform the agreement and in accordance with the GDPR and other relevant regulations. For more information on our privacy policy, please consult the Privacy Statement published on our website www.ecospenser.eu.

13. Intellectual property rights

Ownership of the intellectual property rights relating to the products, plans, techniques, drawings, designs, diagrams, and so on made by the Seller, belongs exclusively to the Seller. The Buyer may in no way copy or reproduce these items, in whole or in part, without the Seller's prior consent.

14. End of agreement

The Seller reserves the right to terminate the agreement with immediate effect, with no notice of default, and without being liable for any compensation in the event of a change of control over the Buyer, or if the Buyer commits breach of contract, is declared bankrupt, obtains a moratorium on the payment of debts, is put into liquidation, or undergoes a judicial reorganization. This also applies to any other situation in which the Buyer's fulfilment of his obligations towards the Seller is seriously compromised and to any event or situation that warrants a serious suspicion of the Buyer's insolvency.
If the agreement is terminated, the Seller also reserves the right to claim a fixed compensation equal to 15% of the selling price, subject to a minimum of €250. All claims it has against the Buyer shall become immediately due and payable, without prejudice to the Seller's right to claim additional compensation subject to proof it has actually incurred higher damage.

15. General

If one or more provisions of these general conditions would be null and void or contrary to mandatory law, this shall not affect the validity of the remaining provisions. The parties agree to replace the void provision(s) with a valid provision having the same economic effect. Failure to insist on the execution of any provision of these general conditions shall not be construed as a waiver or limitation of a right. Nothing in these general conditions creates, implies, or proves any form of joint venture between the parties or any form of mandate or agency. The parties are not authorised to make statements or enter commitments in the name and on behalf of each other.

16. Applicable law and competent courts

These general conditions and all agreements to which these general conditions apply, as well as any other agreements related thereto, shall be exclusively governed by Belgian law. The application of the Vienna Sales Convention of 11 April 1980 is expressly excluded. All disputes between the parties concerning agreements subject to these general conditions shall fall under the exclusive jurisdiction of the courts of the judicial district of Ghent. The Seller reserves the right to bring disputes before another court in accordance with Belgian law.