

Interpretation

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in England are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Company: Euro Caps & Closures Limited

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Company and the Customer in respect of the supply of Goods and/or Services in accordance with and including these Conditions.

Customer: the person(s) (natural or legal) who purchases the Goods and/or Services from the Company.

Deliverables: the deliverables set out in the Order.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 14.1(a).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and the Company to form part of the Contract.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods.

Order Acknowledgement – the Company's written acknowledgement of the Order incorporating these terms and conditions

Product Data – any description of the product appended to the Order as supplied by the Company.

Company Materials: has the meaning set out in clause 9

1.2 Construction. In these Conditions, the following rules apply :

- (a) a reference to a party includes any personal representatives, successors or permitted assignees;
- (b) **"Laws"** means any legislation, regulation, ordinance, order, directive, notification, by-law, guideline, code or standard which is legally binding in the United Kingdom (or any part of it) from time to time
- (c) **"Regulatory Requirements"** means:
 - a. Laws
 - b. the common law as applicable to the parties (or any one of them) for the time being;
 - c. any final and binding court order, judgment or decree applicable to the parties (or any one of them) for the time being; and
 - d. any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being; and/or (ii) stipulated by any regulatory authority to which any party is subject.
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) Reference to **writing** or **written** includes faxes and e-mails.

2. **Contractual Basis**

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Company receives the duly signed Order Acknowledgement at which point and on which date the Contract shall come into existence (**Commencement Date**). For the avoidance of doubt the Order Acknowledgement may be sent by e-mail.
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless agreed in writing by the Company.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, however and whenever arising.
- 2.6 Any quotation or indication of price given by the Company shall not constitute an offer, and, unless otherwise stated is only valid for a period of 20 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. **Goods**

- 3.1 The Goods are described in the Product Data as modified by any applicable Goods Specification and the Order Acknowledgement.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Company reserves the right to amend the Product Data or Goods Specification without prior notice.

4. **Delivery of Goods**

- 4.1 The Company shall ensure that: each delivery of the Goods is accompanied by a delivery note identifying the date of the Order, all relevant Customer and Company reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any).
- 4.2 The Goods shall be delivered to such location as may be advised by the Customer before delivery ("**the Delivery Location**") provided always that such address is provided within five Business Days of the Company notifying the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on delivery to the Delivery Location. The Customer warrants that the Delivery Address is accessible for vehicles up to and including a 40' articulated lorry. For the avoidance of doubt it shall be the Customer's responsibility to offload the Goods.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery shall not be of the essence. The Company shall not be liable for any delay in delivery of the Goods and shall have no liability to the Customer however and whenever so arising in respect of late delivery, other than as set out in this clause 4.
- 4.5 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Customer fails to accept or take delivery of the Goods within 5 Business Days of the Company notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the Fifth Business Day following the day on which the Company notified the Customer that the Goods were ready; and
 - (b) the Company shall store the Goods until delivery takes place at the Customer's risk, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If Thirty Business Days after the Company notified the Customer that the Goods were ready for delivery the Customer has not accepted or taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **Quality of Goods**

- 5.1 The Company warrants that on delivery the Goods shall:
 - (a) conform in all material respects with the Goods Specification; and
 - (b) be free from material defects in design, material and workmanship;

5.2 Subject to clause 5.3, if:

TERMS AND CONDITIONS IN RESPECT OF THE SUPPLY OF GOODS & SERVICES BY THE COMPANY. The Customer's attention is expressly drawn to clause 11.

- (a) the Customer gives notice in writing (including photographs where appropriate) within 7 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the non-compliant Goods are laid aside and quantified and the Company is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.3 The Company shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the defect arises as a result of the Company following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of the Company;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the failure of the Goods' to comply with the warranty set out in clause 5.1, however and whenever arising, including without prejudice to the foregoing generality, loss of profit or other economic or consequential losses.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company under clause 5.2.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods that the Company has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods and any proceeds of sale of the Goods on a fiduciary basis as the Company's Trustees;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
 - (e) notify the Company immediately if it becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(k); and
- give the Company such information relating to the Goods as the Company may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(k), or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Customer's obligations**
- 7.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate; satisfy itself that the Goods are of satisfactory design and suitable quality for the purpose contemplated and shall place no reliance on any advice offered by the Company
- 8. Charges and payment**
- 8.1 The price for Goods shall be the price set out in the Order Acknowledgement or, if no price is quoted, the price set out in the Company's published price list as at the date of delivery. Unless otherwise stated the price of the Goods is inclusive of all costs and charges of packaging, and, transport of the Goods.
- 8.2 The Company reserves the right to:
- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to:
 - (i) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 8.3 In respect of Goods, the Company shall invoice the Customer on or at any time before completion of delivery.
- 8.4 The Customer shall pay each invoice submitted by the Company:
- (a) within 30 days of the date of the invoice or as otherwise intimated in writing by the Company; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Company,
 - (c) prior to delivery of any Goods, and time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.
- 8.6 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (Due Date), the Company shall have the right to charge interest on the overdue amount at the rate of Eight per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after decree, and compounding quarterly.
- 8.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 8.8 Credit shall only be given where appropriate credit insurance is in place and subject to the Company's discretion and any additional credit terms imposed by it. Credit may be refused at any time prior to delivery. If Goods are supplied to The Company on credit then, at its sole discretion, the Company may extend similar credit to the Customer but only on the basis that the credit terms of the original supplier shall apply as between the Company and the Customer
- 9. Intellectual property rights**
- 9.1 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 9.2 All Company Materials are the exclusive property of the Company.
- 10. Confidentiality**
- A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.
- 11. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 11.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 11 of the Supply of Goods and Services Act 1982;
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.
- 11.2 Subject to clause 11.1:

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- (a) the Company shall under no circumstances whatever be liable to the Customer, whether in contract, delict, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of the Contract.

11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.4 This clause 11 shall survive termination of the Contract.

12. Termination

12. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply, or becomes apparently insolvent in term of section 7 of the Bankruptcy (Scotland) Act 1985;
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration, diligence or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed a receiver or an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(a) to clause 12.1(h) (inclusive);
- (j) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (k) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12. Without limiting its other rights or remedies, the Company may terminate the Contract:

- (a) by giving the Customer 21 days written notice;
- (b) if the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
- (c) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:

- (a) the Customer fails to make pay any amount due under this Contract on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 12.1(a) to clause 12.1(k), or the Company reasonably believes that the Customer is about to become subject to any of them.

12.4 The Company may, at its sole discretion, choose to accept an offer by the Customer to terminate the Contract at any point after to commencement of manufacture of the Goods on the basis that the Customer pays 60% of the invoice value of the Order, it being agreed that this represents a fair pre-estimate of the Company's loss

13. Consequences of termination

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. General

14.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Company or its subcontractors.
- (b) The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents the Company from providing any of the Services and/or Goods for more than 10 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.2 Assignment and subcontracting:

- (a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

14.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

14.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Company.

14.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Scots law, and the parties irrevocably submit to the exclusive jurisdiction of Glasgow Sheriff Court.