

## ECOCHOICE LIMITED

### TERMS AND CONDITIONS OF SALE

#### **1. Interpretation**

1.1. In these Conditions:-

"**Buyer**" means any individual, firm, company or other legal entity or undertaking who buys or agrees to buy the Goods from the Seller named in the Contract;

"**Conditions**" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

"**Contract**" means the contract for the purchase and sale of the Goods incorporating these Conditions;

"**Delivery**" means completion of delivery of an Order in full or any of its intallments;

"**Delivery Date**" means the date specified by the Seller when the Goods are to be delivered;

"**Goods**" means the product(s) which the Seller is to supply, as per its quote, in accordance with these Conditions;

"**Order**" means an order for Goods submitted by the Buyer in accordance with clause 3;

"**Seller**" means Ecochoice Limited, a company registered in England and Wales under number 05659260 and whose registered office is at Compass House, Chivers Way, Histon, Cambridge, England, CB24 9AD;

"**Writing**" may include email as long as the recipient acknowledges receipt.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

#### **2. Basis of the Sale**

2.1. 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.

2.2. No variation of these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

#### **3. Orders and Specifications**

3.1. Each Order shall be given in Writing and specify the type and quantity of the Goods ordered. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary

information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation.

3.3. Each Order shall be deemed to be a separate offer by the Buyer to purchase Goods on the terms of this agreement, which the Seller shall be free to accept or decline at its absolute discretion.

3.4. No Order shall be deemed to be accepted by the Seller until confirmed in Writing by the Seller.

3.5. The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.

3.6. No order which has been accepted by the Seller may be amended or cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such amendment or cancellation.

#### **4. Price of the Goods**

4.1. The price of the Goods shall be the Seller's quoted price.

4.2. All prices quoted are valid for 14 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.3. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, stock availability, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.4. The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

#### **5. Quality**

5.1. The Seller shall endeavour to deliver under the Contract Goods of a quality and standard that meets the Buyer's specifications and in the absence of clear specifications from the Buyer, the Seller shall use reasonable endeavours to deliver the Goods to a satisfactory quality.

#### **6. Terms of Payment**

6.1. Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods soon after Delivery of the Goods. Each invoice shall quote the relevant Order Numbers.

6.2. The Buyer shall pay the price of the Goods in full and in cleared funds within 30 days of the date of the Seller's invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.3. Unless otherwise agreed in writing by the Seller, the Buyer shall not be entitled to set off against any monies due to the Seller under the Contract, any amount claimed by or due to the Buyer whether pursuant to the Contract or any other account whatsoever.

6.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

6.4.1. cancel the contract or suspend any further deliveries to the Buyer;

6.4.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

6.4.3. charge the Buyer interest (both before any judgement as well after as before any judgement on the amount unpaid, at the rate of 8% per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

6.4.4. recover the costs of any enforcement action or proceedings.

## **7. Delivery**

7.1. Delivery of the Goods shall be made at the Buyer's designated address on the Delivery Date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for Delivery. If no time for Delivery is specified in the Contract the Buyer shall be bound to accept the Goods when the same are ready for Delivery by the Seller; the Seller shall be under no obligation to deliver the same until the expiry of a reasonable time from the date of the Contract.

7.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted Delivery Date upon giving reasonable notice to the Buyer.

7.3. If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the value of the order, with the choice between replacement or refund to be at the Seller's discretion.

7.4. If the Buyer fails to take Delivery of the Goods or fails to give the Seller adequate Delivery instructions at the time stated for Delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

7.4.1. store the Goods until actual Delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.4.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **8. Risk and Property**

8.1. Risk of damage to or loss of the Goods shall pass to the Buyer on Delivery.

8.2. Title to the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall keep the Goods on the Seller's behalf and separate from third parties' goods and properly stored, protected and insured and identified as the Seller's property.

8.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **9. Warranties and Liability**

9.1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery.

9.2. The above warranty is given by the Seller subject to following conditions;

9.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

9.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), poor or unsuitable storage, misuse, alteration or repair of the Goods without the Seller's approval;

9.2.3. the Seller shall not be liable for Goods that fail to comply with the warranty where the Buyer alters or incorporates the Goods into other products.

9.2.4. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

9.3. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976, as amended) the statutory rights of the Buyer are not affected by these Conditions.

9.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of Delivery. If the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.6. The Seller is entitled to inspect the damaged Goods upon receipt of notice from the Buyer under clause 9.5 and the Buyer must cooperate with the Seller and allow access to the Goods.

9.7. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the

Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, at its discretion the Seller shall repair or replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

9.8. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods.

9.9. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

9.9.1. Act of God, explosion, flood, tempest, fire or accident;

9.9.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.9.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.9.4. import or export regulations or embargoes;

9.9.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

9.9.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery, or transport/haulage;

9.9.7. non-performance of suppliers or sub-contractors;

9.9.8. power failure or breakdown in machinery.

#### **10. Insolvency of Buyer**

10.1. This clause applies if:-

10.1.1. the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3. the Buyer ceases, or threatens to cease, to carry on business; or

10.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2. If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary or the Seller shall be entitled to remove the Goods.

#### **11. Dispute Resolution Procedure**

11.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it

(Dispute) then the parties shall attempt to resolve the Dispute in good faith themselves.

11.2. If the Seller and Buyer are for any reason unable to resolve the Dispute within 30 days the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

11.3. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

11.4. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period, or the mediation terminates before the expiration of the said period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 13.6.

#### **12. Data Protection**

12.1. The Seller shall hold any personal data provided by the Buyer subject to the Data Protection Act 1988 and its duty of confidentiality.

12.2. The Seller will process the information primarily for the purpose of fulfilling the Buyer's Order. The Buyer acknowledges and accepts that from time to time the Seller may consult with and disclose the data to credit reference agencies, banks, credit insurers, and other responsible organisations and professional advisors.

12.3. The Buyer has a right of access under data protection laws to personal data held about it by the Seller, subject to giving the Seller written notice.

#### **13. General**

13.1. For the purposes of The Contracts (Rights of Third Parties) Act 1999, these conditions do not create any right or remedy enforceable by any person other than the Buyer and the Seller. This condition does not affect any right or remedy of a third party that exists or is available apart from that Act.

13.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4. If the Buyer is a "consumer" as defined in consumer protection legislation the consumers statutory rights shall not be affected by the terms set out in these conditions. Information as to the consumers statutory rights may be obtained from the consumers local Trading Standards department or Citizens Advice bureau or solicitor.

13.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

13.6. The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.