

## CONDITIONS OF SALE – BUSINESS TO BUSINESS

### **1** Definitions

1.1 In these general terms and conditions the following terms shall have the following meaning:

**Customer:** any legal entity or person who, in the course of a business, has made, or as the case may be, wishes to place an order with EPSON, buy EPSON Products or enter into an Agreement with EPSON;

**EPSON:** EPSON Europe B.V., with its registered office at Amsterdam, the Netherlands, registered with the Chamber of Commerce under number: 33215466 or any of its affiliates or subsidiaries;

**Agreement:** each agreement between EPSON and a Customer, regardless of its form, with respect to the delivery of Products;

**Products:** all products or parts of products as offered and/or delivered by EPSON and/or services related to such Product.

### **2** Applicability

2.1 These general terms and conditions shall apply to all legal relations between EPSON and Customer including but not limited to legal acts and offers performed by EPSON, all legal acts and orders of Customer and all Agreements entered into by EPSON and Customer. By placing an order or entering into an Agreement, Customer relinquishes his conditions of purchase. Any Agreement shall be binding upon EPSON only if and insofar as they have been confirmed in writing by EPSON. The applicability of general conditions used by Customer is explicitly rejected.

2.2 Deviations from and additions to these general terms and conditions and any Agreement shall only be valid if they have been expressly agreed in writing by EPSON.

2.3 In case of any inconsistency between the English version of these general terms and conditions and a version in any other language, the English version shall prevail.

2.5 In the event a specific Agreement between EPSON and Customer is concluded to which these general terms and conditions apply, the provisions of such specific Agreement shall prevail in case of a conflict between the provisions of such specific Agreement and the provisions of these general terms and conditions.

### **3** Offers and prices

3.1 All offers of EPSON are inseparable, made free of engagement, not binding to EPSON and are meant only as an invitation to place an order by Customer, unless the quotation expressly states otherwise.

- 3.2 All price indications are based on prices and rates at the moment of entering into the Agreement. In case alterations occur in one or more of the factors constituting EPSON's cost price, such as, but not limited to, costs of materials, measures by the Government, wages, premiums, freights, exchange rates and taxes, EPSON is entitled to increase the prices accordingly. EPSON shall inform the Customer in writing of the price increase. Customer is deemed to have accepted the change unless it has informed EPSON in writing within 14 days after receipt of such notice that it wishes to terminate the Agreement.
- 3.3 Unless expressly stated otherwise in the offer, all prices are exclusive of delivery costs, insurance costs, turnover tax, (V.A.T.), any other taxes as well as any other levies imposed by the government.
- 3.4 EPSON is not obliged to make inquiries after the intended use of the Products or the circumstances under which the Products shall be used by Customer.

#### **4 Orders**

- 4.1 The Customer shall follow any order guidelines and/or procedures provided for by EPSON, in the absence of which, the following shall apply.
- 4.2 Orders received from Customer are binding upon Customer regardless of the form in which the orders have been made to EPSON. An Agreement between EPSON and Customer is concluded if EPSON accepts Customer's order in writing or if EPSON commences the execution of the order placed by Customer.
- 4.3 Customer is required to verify the correctness of the order acknowledgement within 48 hours after receipt of the order acknowledgement. Without notice to the contrary by Customer, the content of the order confirmation then becomes binding upon Customer.
- 4.4 Verbal arrangements and changes in an Agreement shall not be effective until they have been expressly confirmed in writing by EPSON.

#### **5 Deliveries/force majeure**

- 5.1 The times of delivery indicated by EPSON will be taken into account to the fullest extent possible but shall not be binding and shall only apply as an estimate. Customer is not entitled to dissolve the Agreement and/or claim compensation for damages on the basis of any breach of the indicated delivery time. The Products may be delivered and invoiced in instalments.
- 5.2 If EPSON is prevented from performing any obligation by a situation of force majeure, EPSON may either rescind the Agreement or suspend the performance of the Agreement until the force majeure has ended. Force majeure shall include strikes, transport difficulties, extreme weather conditions, fire, war, acts of terrorism, government measures including, in any case, import and export prohibitions, quota restrictions and interruptions of work at EPSON or its suppliers or agents, as well as non-performance by its suppliers or assisting staff, as a result of which EPSON is not or

no longer able to meet its obligations towards Customer shall in all cases be considered as force majeure. If EPSON chooses suspension, EPSON shall be entitled to change its choice into rescission, subject to notice of its decision being given. EPSON shall not be liable for any loss caused by rescission or suspension. If EPSON can only make partial delivery as a consequence of force majeure, EPSON shall be entitled to do so.

## **6** Transfer of risk

- 6.1 As soon as the Products have been delivered or presented for delivery on the agreed upon delivery address, Customer shall bear the risk for such Products.
- 6.2 Customer shall be obliged to accept the Products presented by EPSON for delivery immediately after presentation at the agreed address. All costs and losses caused to EPSON due to Customer not accepting (part of) the Products ordered by Customer shall be for Customer's account, including any storage costs.
- 6.3 Customer shall be solely responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

## **7** Payment

- 7.1 Customer shall follow any payment guidelines and/or procedures provided for by EPSON, in the absence of which, the following shall apply.
- 7.2 Payment shall take place to an account designated by EPSON, without any discount and in the currency in which the Products were invoiced.
- 7.3 Customer shall pay all invoices within the payment term indicated on the invoice or at least within 30 days after the date of the invoice.
- 7.4 If Customer fails to make (a timely) payment, EPSON shall be entitled to charge the statutory interest as well as all costs caused by the default, such as collection charges and judicial and extra judicial costs.
- 7.5 If Customer fails to perform its payment or any other obligation under this Agreement, EPSON is entitled, to its satisfaction, to demand advance payment or to its sole discretion, an adequate security in respect of any future delivery.
- 7.6 Customer shall not have the right to suspend or set-off any payment with a payment to Customer, if any, due by EPSON.

## **8** Warranties/ Non conformity

- 8.1 EPSON will on no account give warranties for Products in excess of the warranties it has received from its suppliers. EPSON warrants only that at delivery the Products comply with the contents of any warranty explicitly made in writing. Any other warranty is explicitly excluded.

- 8.2 Customer declares that he is aware of the qualities of the Products supplied to him and also of all legal regulations relating to the Products to which he is subject as the Customer. In the storage, resale, transport and use of and all further acts involving the Products supplied, Customer undertakes to strictly observe the relevant legal regulations.
- 8.3 Customer is obliged to review and inspect the Products delivered on the presence of any defects. Defects must be reported in writing to EPSON as soon as possible, however in any case within five **(5) working days** after the actual delivery of the Products. If no defect has been reported within the aforementioned term, this means that the Products have been approved and the liability of EPSON will be completely cancelled. This provision does not apply in case of any mandatory right of recourse of Customer
- 8.4 If a claim about a possible incorrect execution of orders or about the quality of the Products delivered are found to be well-founded and do not result in force majeure to EPSON, EPSON will be entitled – at its sole discretion - to replace or repair the Products or credit the purchase price of the defective Product. EPSON shall not have any further liability or be liable for damages in respect of incorrect delivery. No claims shall entitle Customer to cancellation. Any return of Products shall be for account and at the risk of Customer and will be permitted only after the prior written consent of EPSON. Customer is obliged to follow EPSON's instructions with respect to the storage and/or return of the Products to be replaced.
- 8.5 Any claim and/or defence based upon facts that would justify the claim that the Products delivered do not conform to the Agreement and/or are defective in any event expires one (1) year after the date of delivery.

## **9 Confidentiality**

- 9.1 Any and all information, including strategic information, development plans, financial conditions, business plans, any co-developer or supplier identities, data business records, customer lists, project records, market reports, employee lists and business manuals, policies and procedures information relating to processes, technologies or theory or any other information which may be disclosed by EPSON to Customer in connection with an Agreement, shall be treated by Customer as confidential. Such confidential information shall not be reproduced, used or disclosed to others by the Customer without EPSON's express written consent, except to the extent required by applicable law or stock exchange rules or by any competent authority.

## **10 Intellectual property**

- 10.1 Any intellectual and industrial property rights to the Products and documentation belonging thereto shall remain solely with EPSON, its suppliers and/or licensors.
- 10.2 Customer shall not be allowed to remove or modify any reference to confidentiality, copyrights, trademarks, business names or other intellectual or industrial property right from the Product, documentation or any other materials.

- 10.3 Customer shall only use EPSON trademarks in the context of and in relation to the Products supplied by EPSON and in conformity with any guidelines issued by EPSON from time to time, unless Customer has first obtained EPSON's explicit written consent to any other use. If the EPSON trademarks appear on advertising material of any description used by Customer they should be in a form identical to that used by EPSON in its standard sales literature. In no circumstances should EPSON trademarks be used in direct association with the name of any other manufacturer or another brand name.

*Anti-Counterfeit*

- 10.4 In particular, Customer is required not to make statements concerning compatible products inconsistent with or damaging to the EPSON brand values. EPSON expects Customer to co-operate fully with EPSON's anti-counterfeit actions in relation to consumable products. On any reasonable request of EPSON, Customer shall allow EPSON to access Customer's warehouse premises to inspect Customer's stock and to inspect Customer's purchase records for EPSON branded Products. Fees associated with such inspection will be borne by EPSON.

- 10.5 Customer is required to provide market intelligence and all reasonable assistance requested by EPSON, to EPSON concerning any offers of EPSON Products from outside the EEA (or from within the EEA) where the source, nature or circumstances of the offer gives rise to a reasonable suspicion that the goods may be counterfeit or may have been imported from outside the EEA without EPSON's consent and therefore in breach of EPSON's and/or Seiko EPSON Corporation's intellectual property rights or any other knowledge Customer may have regarding suspected infringements of EPSON's and/or Seiko EPSON Corporation's intellectual property rights.

*Market Intelligence*

- 10.6 In addition to market intelligence relating to the sale of infringing products, Customer will also use reasonable commercial efforts to provide market intelligence and other information concerning the wider market in which Customer and EPSON operate in order that Customer and EPSON may compete more effectively with compatible and refill products. Customer is not required to disclose any information that may be conceived as a violation of information-sharing restrictions imposed by law.

**11 Ownership of Products/retention of title**

- 11.1 All Products delivered by EPSON to Customer shall remain the property of EPSON until Customer has paid the purchase price and all other debts payable to EPSON including all amounts which the Customer may owe due to a breach of any of its obligations. If Customer is in default or if EPSON has, in its opinion, reasonable grounds to expect that no full payment will be made, EPSON may, without giving prior notice of default, repossess all Products delivered to Customer. Customer hereby irrevocably authorises EPSON, as well as any third party designated by EPSON, to enter the premises of Customer for this purpose. All costs related to the repossession of the relevant Products by EPSON are borne by Customer.



- 11.2 Customer shall be entitled to resell, in the ordinary course of business, Products delivered to it that are still owned by EPSON. At the first request of EPSON, Customer shall create a right of pledge regarding overall receivables that result from reselling Products delivered to Customer under any Agreement as security for all present and future debts owed by Customer to EPSON.
- 11.3 Until the moment of full payment, Customer shall not sell or give third parties the use of the Products outside the ordinary course of business of Customer, whether by way of rent or in any other way.
- 11.4 Customer shall insure all Products delivered to it properly, in any case against risks of theft, damage and loss.

## **12 Liability**

- 12.1 EPSON shall not exclude or limit liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any liability that cannot legally be limited. Subject thereto, in no event shall EPSON be held liable for indirect losses or damage howsoever arising out of or as a result of its negligence or fraudulent misrepresentation.
- 12.2 If EPSON is obliged to pay compensation, such compensation shall never exceed the net price excluding sales taxes stipulated on the invoice regarding the defective Products that caused the damages.
- 12.3 Customer shall hold EPSON harmless from all consequences, whatever they may be, of any claims which might be enforced against EPSON by Customer's customers or third parties in respect of the Products purchased, insofar this is permitted by mandatory Dutch law.
- 12.4 EPSON shall, irrespective of the legal basis on which a claim is based, not be liable for damage and losses caused by willful intent or conscious recklessness on the part of other persons than EPSON or its management, including its employees and its independent contractors for whom or for which it can be held liable by law.
- 12.5 EPSON reserves all legal and contractual defences that it can invoke in respect of its liability towards the Customer, for itself and for those of its employees and independent contractors and other persons engaged in the performance of the Agreement for whom or for which it can be held liable by law.

## **13 (Threat of) Insolvency of Customer**

- 13.1 Customer shall be obliged to timely inform EPSON of any of the following events:
- a) the Customer makes any voluntary arrangements with its creditors or becomes subject to an administration order, a petition for the Customer's bankruptcy is filed or Customer is declared bankrupt or Customer goes into liquidation, an application for a provisional suspension of payment or a suspension of payment is made by Customer or granted; or

- b) an encombrancer takes possession, or a receiver is appointed, or any of the property of assets of the Customer; or
- c) Customer ceases, or threatens to cease to carry on business.

13.2 In any of the events referred to in article 13.1 or in the event that EPSON has reasonable ground to expect that any of the events mentioned above is to occur in relation to the Customer, then, without prejudice to any other right or remedy available to EPSON, EPSON shall be entitled to terminate the Agreement(s) with Customer and to suspend any further deliveries without any liability to the Customer.

#### **14 Information**

14.1 Customer is obliged to inform its own customers and third parties receiving the Products about the contents of these general terms and conditions.

14.2 To enable EPSON to track down Products, EPSON may request Customer to initiate a certain tracking process in warehouses and shops.

#### **15 Miscellaneous**

15.1 If Customer is in default towards EPSON, EPSON shall be entitled, without any judicial intervention being required, to cancel the sale and rescind any Agreement not yet completed, without prejudice to EPSON's further rights arising from any Agreement and the law.

15.2 Customer is not allowed to transfer any rights and obligations under an Agreement with EPSON to any third party without the explicit prior written approval of EPSON.

15.3 If any provision of an Agreement or these general terms and conditions, or part thereof, cannot be invoked, or is invalid or null and void, the other provisions, or part thereof, shall remain in full force. The parties agree to replace the invalid or null and void provision by a provision whose content and effect corresponds as much as possible to the provision that is invalid or null and void.

#### **16 Choice of law and legal jurisdiction**

16.1 These general term and conditions, the Agreements and all legal relationships between EPSON and Customer shall be exclusively governed by and construed in accordance with the laws of the Netherlands. The provisions of the United Nations Convention on Contracts for the International Sale of Goods ("*Weens Koopverdrag*") do not apply to these general conditions nor to any individual Agreement.

16.2 Any dispute arising out of or in connection with these general terms and conditions, the Agreements and/or any other legal relationship between EPSON and Customer shall be submitted to the exclusive jurisdiction of the competent courts in Amsterdam, the Netherlands.