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## **Euroengel srl Standard Terms and Conditions of Sale**

### **1. Applicability**

- a. The 12Vdc refrigerated / heated transport containers manufactured by Euroengel srl ("Goods") has been designed for the professional temperature controlled transport of limited volumes of perishable items, like food, pharmaceuticals, biologicals. The Goods are intended for sale to professional operators only, not for sale-to and use-by end consumers. The sales of the Goods do not fall within the scope of Directive 1999/44/EC or similar end users protection legislations.
- b. These Standard Terms and Conditions of Sale (these "Terms") are the only terms which govern the sale of the Goods by Euroengel srl Via Ferrini 14 25128 Brescia, Italy ("Seller") to any professional customer or reseller ("Buyer"). Notwithstanding anything herein to the contrary, if a separate written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- c. Any quotation, order acknowledgement or the like issued by Seller (the "Sales Confirmation" and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- d. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### **2. Parties, trademarks, IP rights**

- a. It is recognized that Seller and Buyer are entirely independent businesses. Therefore, except as otherwise explicitly set forth in this Terms, neither of the Parties, nor their agents and employees shall, under any circumstances be deemed agents or servants of the other party for any purpose whatsoever; likewise neither Party shall have any right or authority to enter into any contract or commitment in the name of or on behalf of the other Party to bind or purport to bind the other party in any manner whatsoever.
- b. Under no condition shall this Terms operate or be construed as a joint venture or partnership.
- c. The Buyer may use Supplier's registered trademark, trade names or any other related symbols but only for the purpose of identifying and advertising the Products, not for the purpose of identify the Buyer as part of the Seller's official distribution network.
- d. All patterns, specifications, drawings, sketches, models samples, tools, dies, molds, designs, technical information data related to the Goods are and remain property of the Seller.

### **3. Offers, Orders**

- a. The Seller's offers shall not be binding, in particular with reference to quantities, price and delivery time.
- b. Orders placed by the Buyer shall not be regarded as accepted before these have been confirmed by the Seller in writing. If the Seller should fail to confirm an order in writing, the Seller's invoice or the execution of the order by the Seller shall be regarded as confirmation.
- c. Orders and/or amendment of orders shall be received in writing with clear indication of Seller's article number(s), description and quantity. Otherwise the Seller does not accept any responsibility for errors or consequent misunderstandings.



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#### 4. Price

- a. Buyer shall purchase the Goods from Seller at the price[s] (the "Price[s]") set forth in Seller's published price list in force as of Buyer's order reception by Seller.
- b. All Prices are expressed in Euro currency and are exclusive of all sales, use and excise taxes, and any other similar taxes, tariffs, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs tariffs, duties and taxes
- c. Standard Seller's packaging is included in the price. In case of request of special packaging by Buyer, the extra cost will be charged.
- d. Tariffs and duties (and product classifications underlying the same) may be subject to change at any time by any Governmental Authority. Increases in such tariffs and duties directly affecting the cost or price of Seller's Goods are beyond Seller's control. Whether or not Seller has previously charged Buyer for any imposed duties or tariffs, Seller reserves the right, without prior notice, to pass through to Buyer any and all new or incremental tariff or duty surcharges imposed by any Governmental Authority on any and all Goods sold by Seller.

#### 5. Delivery

- a. The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.
- b. Unless otherwise agreed in writing by the parties, Seller shall deliver Goods "EXW (Incoterms) loaded, San Zeno Naviglio" (the "Delivery Point"), using Seller's standard methods for packaging and shipping such Goods. Any risk or damage occurred during transportation are on Buyer's charge. Any request for missing part or damage must be reverted by Buyer to its shipping agent.
- c. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- d. If for any reason Buyer fails to accept delivery of Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related resulting costs and expenses (including, without limitation, storage and insurance) incurred or suffered by Seller.
- e. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- f. The Seller shall not be liable for any claimed non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within seven (7) days of the date when the Goods would in the ordinary course of events have been received.
- g. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.



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## **6. Title, Risk of Loss, No Return policy**

- a. Title to, and risk of loss of, Goods passes to Buyer upon delivery of the Goods at the Delivery Point.
- b. All sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller, unless specifically authorized by Seller with the issue of a Return Goods Authorization ("RGA").
- c. In case of the issue of a RGA by the Seller, Goods will be returned back to Seller, free of any cost and in their full integrity. Buyer will apply a fifteen (15) per cent reduction on credit value to recover operating cost, Goods check-u and stock replacing.

## **7. Payment Terms/Invoicing**

- a. Buyer shall pay all invoiced amounts due to Seller within the payment terms noted on Seller's invoice, and shall remit to Seller's designated bank account in Euro currency.
- b. Buyer may not withhold payment of any amounts due and payable as invoiced by Seller by reason of any set-off of any claim or dispute with Seller.
- c. In addition to all other remedies available under these Terms or by Law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any due amounts.
- d. Buyer shall pay a service charge on all late payments at the highest rate permissible under applicable law. Buyer shall reimburse Seller for all such service charges as well as for all costs and expenses incurred by Seller in collecting any late payments invoiced by Seller, including, without limitation, Seller's reasonable attorneys' fees.

## **8. Limited Warranty**

- a. Subject to the conditions hereinafter stated, Seller warrants its Goods, when properly installed and placed under normal service and use, to be free from defects in material and workmanship for a period of twenty-four (24) months from the date in service or twenty-seven (27) months from the date the unit is shipped by Seller, whichever is earlier.
- b. Such a warranty is limited at Seller's option to repair or replacement with new or remanufactured parts of any parts which are found by Seller to have been defective under normal use and service within the specified warranty period. Repair or replacement shall be Buyer's exclusive remedy and correction of defects in the above manner shall constitute complete fulfilment of all obligations and liabilities of Seller with respect of the unit sold, whether based in contract, in tort (including negligence and/or strict liability), or otherwise.
- c. This warranty does not apply to units or parts that have been subjected to modification, misuse, improper installation, abnormal service, storage of hazardous chemicals, use of corrosive substances, transit damage, recharging of cooling system, accident, fire, improper repair, tampering or abuse. Euroengel shall not be responsible for any damages of any kind resulting from incorrect voltages or faults with regards to power supply which falls outside of the appliance operating parameters.
- d. For detailed information about the Warranty Recognition process please refer to Seller's "International Limited Warranty Procedures"
- e. Buyer recognize that the above Limited Warranty offered by Manufacturer is expressly in lieu of all other warranties, either expressed or implied, including any warranty of merchantability or fitness for a particular purpose, that are hereby by Manufacturer disclaimed and excluded.



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## 9. Special Limited Warranty conditions for batteries

- a. The Limited Warranty period for the batteries included in the AuO versions of the Goods is:
  - i. twenty-four (24) months from the date the Good is shipped by Seller for the 12Vdc VRLA batteries
  - ii. twelve (12) months from the date the Good is shipped by Seller for the 24Vdc removable Li\_Ion batteries
- b. Seller has no obligation under this Limited Warranty for batteries subjected to the following conditions (including but not limited to):
  - i. damage caused during shipping or mishandling of the battery
  - ii. environmental damage such as inappropriate storage conditions, exposure to extreme hot or cold temperature, fire or freezing, or water damage, impact or collision
  - iii. damage due to improper operation or maintenance such as under- or over-charging the battery, cold temperature charging, lack of cleaning resulted in corroded terminal connections
  - iv. battery that has been opened, modified or tampered with
- c. This Limited Warranty does not cover a battery that has reached its normal end of life due to usage that may occur prior to the Warranty Period. A battery can deliver only a fixed amount of energy over its life which will occur over different period of time depending on the application. Seller reserves the right to deny a warranty claim if the battery is determined, upon inspection, to be at its normal end of life even if within the Warranty period.

## 10. Limitation of Liability

- a. In no event and under no circumstances shall Seller be responsible under his Limited Warranties for any other charge whatsoever, including but not limited to charges or claims for lost business, lost time, lost profits, loss of use, loss of transported goods, or any kind of incidental or consequential damages, however denominated or described.
- b. Seller shall not be held responsible for any injuries to persons caused by the incorrect or negligent usage of the unit.
- c. No claims of any kind, whether as to materials delivered or for no-delivery of materials from Seller shall be greater in amount than the purchase price of the Goods in respect of which such damages are claimed.

## 11. Compliance with Law

- a. Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Terms. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Terms or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import or export clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.
- b. Buyer shall comply with all Laws administered by Governmental Entity imposing economic sanctions and trade embargoes ("Economic Sanctions Laws") against designated countries ("Embargoed Countries"), entities, and persons (collectively, "Embargoed Targets"). Buyer represents that it is not an Embargoed Target or otherwise subject to any Economic Sanctions Law.
- c. Buyer shall comply with all Economic Sanctions Laws. Without limiting the generality of the foregoing, Buyer shall not (a) directly or indirectly export, re-export, transship, or otherwise deliver the Goods, or any portion of the Goods, to an Embargoed Target or (b) broker, finance, or otherwise facilitate any transaction in violation of any Economic Sanctions Law.
- d. In the event that Seller determines that Buyer is in violation of Economic Sanctions Laws or is selling Seller's Goods to Embargoed Countries or Embargoed Targets, Seller shall immediately cancel all pending orders and shipments, and shall hold Buyer liable for all resulting costs, expenses and damages incurred by Seller, including its reasonable attorneys' fees.



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## 12. Termination

- a. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer:
- i. fails to pay any amount when due under this Agreement;
  - ii. has not otherwise performed or complied with any of these Terms, in whole or in part or
  - iii. becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## 13. Amendment and Modification

- a. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

## 14. Waiver

- a. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

## 15. Confidential Information

- a. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing.
- b. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section.
- c. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

## 16. Force Majeure

- a. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions or orders, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.



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## **17. Assignment, No Third-Party Beneficiaries**

- a. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No permitted assignment or delegation shall relieve Buyer of any of its obligations hereunder.
- b. This Agreement is for the sole benefit of the parties here to and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

## **18. Governing Law, Jurisdiction**

- a. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the Laws of the Republic of Italy, without giving effect to any choice or conflict of law provision or rule.
- b. The application of the provisions of the Vienna Convention on Sales of Good (CISG) is specifically excluded by the parties.
- c. Any disputes arising between the parties shall be submitted to the exclusive jurisdiction of the Court of Brescia, Italy.

Pursuant articles 1341 e 1342 of the Italian Civil Code the Buyer hereby specifically accepts the following provisions:

- Art. 1.b Applicability of the Terms to all the transactions
- Art. 2.b Terms to prevail over any Buyer's general terms
- Art. 5.a Delivery
- Art. 5.g Limitation of liability for non-delivery
- Art. 6.b No Return policy
- Art. 7.b No right to make compensations, retentions, reductions
- Art. 10 Limitation of Liability
- Art. 12 Termination
- Art. 17 No third-party beneficiary
- Art. 18.a Governing Law
- Art. 18.b No applicability of CISG
- Art. 18.c Jurisdiction