

# CASELLA CEL LIMITED

## CONDITIONS OF SALE

### 1.GENERAL

1.1 Any contract between Casella CEL Limited ("Casella") and any of its customers ("The Buyer") for the supply of goods or services ("goods") by Casella (and any quotation, invitation, offer or acceptance relating thereto) shall automatically incorporate these conditions which shall prevail over any other terms or conditions attached to the Buyer's order form or offer or acceptance or contained in any other written or oral intimation and any such other terms or conditions shall not form part of the contract between Casella and the Buyer unless expressly agreed in writing signed on behalf of Casella.

1.2 No waiver of any of these conditions shall be effective unless it is in writing and signed on behalf of Casella: any such waiver shall constitute a waiver for the purposes of that particular transaction only and all other conditions herein shall remain in full force and effect.

1.3 Any Contract shall be deemed to be made only upon the acknowledgement in writing by Casella of the Buyer's order or offer (if earlier) the allocation by Casella of Particular goods to the Buyer's order or offer.

### 2.PRICES AND PAYMENT

2.1 Any price quoted or agreed by Casella shall unless otherwise specifically stated represent the net price of the goods after deducting any applicable discount and exclusive of all taxes duties and other impositions.

2.2 The price payable in respect of the goods shall be those generally applicable at the date of despatch except in those cases where Casella expressly confirms that the price is fixed for the duration of the contract or a specified period (in respect of goods delivered in that period).

2.3 All invoices shall be paid not later than the 30<sup>th</sup> day from the date the invoice is rendered.

2.4 All prices quoted are strictly nett and Value Added Tax will be charged at the appropriate rate. Whilst every endeavour will be made to maintain the prices quoted, Casella reserves the right to effect changes without prior notice. This will include the right to change prices without prior notice in order to cover the following:

- currency fluctuations which increase the cost to Casella of materials or goods imported into the United Kingdom.
- extra costs incurred as a result of the cancellation, alteration, postponement or re-scheduling of orders.

### 3.DELIVERY

Any delivery date or periods for delivery quoted or agreed by Casella are estimates only and Casella shall not be liable for damage or loss whether arising directly or indirectly out of delay in delivery and whether in respect of the whole or any part of the goods ordered nor for any consequential loss however arising and the Buyer shall not be entitled to cancel the contract in such circumstances unless it shall be materially and adversely affected by such delay in which case it may by reasonable notice in writing cancel the contract insofar as it relates to the delayed delivery (and the goods relating to that delivery only). The Buyer shall be entitled to reschedule delivery dates upon giving reasonable prior written notice of its desire so to do provided that such rescheduling does not materially and adversely affect Casella.

### 4.DESPATCH OF GOODS

4.1 Where goods are sold ex works or otherwise in circumstances where Casella does not expressly assume responsibility for insurance during transit or part thereof then the responsibility of Casella for the goods shall cease the moment the goods leave Casella's works and Casella shall be under no obligation to give the buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

4.2 Where Casella arranges carriage of the goods it does so as agent for the Buyer and not as principal even if the charge made for the carriage of the goods is not directly referable to the actual cost thereof and Casella's sole duty in respect of such carriage and the goods during carriage shall be to arrange for carriage by a person it reasonably considers to be competent.

4.3 Save as provided in paragraphs 4.1 and 4.2 above or in the specific terms applicable to the sale Casella shall be responsible for the goods until they leave Casella's premises whereupon the risk therein shall pass to the Buyer.

### 5.DEFAULT BY BUYER

5.1 In the event that the Buyer shall fail to make any payment by its due date the amount overdue shall bear interest at the rate of 2% per month from and including the due date for payment until but excluding the actual date of payment.

5.2 If the Buyer shall make any default in or commit any breach of its obligations to Casella or if any distress or execution shall be levied upon any property or assets of the Buyer or if it shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be made against it or if the Buyer shall be a limited company and any resolution or petition shall be passed or presented to wind it up or if a receiver shall be appointed in respect of the Buyer's undertaking property or assets (or any part thereof) Casella shall be entitled (without prejudice to any other rights it may have) to cancel each and every contract between Casella and the Buyer or alternatively to suspend or cancel delivery of any goods thereunder.

### 6.CANCELLATION OF ORDER BY CUSTOMER

If a customer cancels an order we reserve the right to charge that customer for:-

- All purchases of material specially obtained for said order.
- All work performed as a direct result of the order.
- All tooling made or purchased specially for the order.
- 10% of total order value for internal administration.

### 7.DESCRPTIONS, REPRESENTATIONS ETC

Unless otherwise specifically stated in writing all statements or representations as to weight, dimensions, details of design, texture and constitution of materials, colour descriptions, performance, delivery dates and the like are approximate only and liable to change without prior notice. If the Buyer relies on any statement or representation made by or on behalf of Casella it shall notify Casella in writing expressly referring to this condition 7 that such is the case so that Casella may confirm or deny the accuracy thereof in writing and in the absence of such confirmation Casella shall not be liable in respect thereof.

### 8.CHANGE OF PRODUCE SPECIFICATION

We reserve the right without prior notice to discontinue any product or to make design changes which we believe are necessary.

### 9.GUARANTEE

9.1. Subject to fair wear and tear Casella shall replace any of the goods which in its reasonable opinion are defective through faulty workmanship or materials provided only that the goods complained of are returned to Casella's works carriage paid within twelve months (for new products) and four months (for products repaired at customer's expense) after the date of the invoice relating to their sale by Casella, the reasonable carriage expenses of the Buyer in so returning the goods from within the United Kingdom will be refunded to the Buyer or request in the event that the goods are found to be defective.

9.2 Certain consumables are not covered by Casella's standard guarantee, for example:-

- Electro-chemical gas cells.
- Gas detection tubes

These examples together with other unspecified products are marked with a "best before date" or "use by date" which becomes the guarantee period.

9.3 Not covered by Casella's guarantee:-

- batteries of all types, supplied by Casella.
- any damage that may be caused by batteries supplied by Casella.

- any damage that may be caused to Casella equipment by batteries not supplied by Casella.
- any radioactive material used in equipment supplied by Casella and any damage or injury caused by radioactive material due to misuse to said equipment.

### 10.EXCLUSIONS AND LIMITATIONS.

10.1 Casella shall not be liable in the event that the goods are unsuitable for any particular purpose or for the use in any particular conditions even if it knows of such purpose or use and accordingly the Buyer must rely on its own judgement as to suitability provided that Casella will replace any goods which fail to meet the specifications in respect of the goods supplied and by reason thereof are unsuitable for the Buyer's purpose.

10.2 All express warranties and conditions (other than those specifically set out in these conditions) and all warranties and conditions implied by law, trade usage or the conduct of the parties as to the quality of the goods, their fitness for a particular purpose, their correspondence with description of sample their life or their wear are hereby expressly excluded.

10.3 Save as otherwise expressly stated in these conditions. Casella shall not be liable for any direct or consequential loss or damage arising from any defect in the goods or otherwise in relation thereto whether or not such loss or damage shall arise from the negligence of Casella its employees or agents or otherwise howsoever.

10.4 In the event that Casella shall fail to meet its obligations under paragraph 9 of these conditions (entitled "Guarantee") its liability shall be limited to the price paid for the goods by the Buyer and the cost of carriage referred to in such paragraph.

10.5 Casella shall not be liable for any consequential, indirect or economic loss whether arising in contract tort (including negligence) or otherwise howsoever in connection (directly or indirectly) with its performance of or failure to perform any duty whatever in relation to the goods or to the contact for their sale.

10.6 In the event that the Buyer shall be entitled to reject the goods the subject of any one delivery such right shall not extend to any other delivery or enable it to cancel the contract as a whole.

10.7 Any statement contained in the preceding provision of this Clause 9 or elsewhere in these conditions which apart from the provisions of this paragraph 10.7 would exclude or restrict any liability of Casella under Section 12 to 15 (inclusive) of the Sale of Goods Act 1979 shall in any contract forming part of a "Consumer Transaction" (as that expression is defined) in the Consumer Transactions (Restrictions on Statements) Order 1976 (as amended) not apply and shall be construed as not applying so as to exclude or restrict any such liability. Any such statement shall to the extent that it does (or would apart from the provisions of this paragraph) exclude or restrict any such liability shall not be or be capable of being a term of any consumer transaction and shall not affect the "Statutory Rights" of a "Consumer" (as those expressions are defined in the same order) in relation to such transaction.

### 11.INDEMNITIES

11.1 The Buyer shall indemnify and keep indemnified Casella against any liability or alleged liability (and all costs, claims, damages and expenses relating thereto) to any third party arising directly or indirectly from any defect in the goods or otherwise howsoever in relation to the contract for their sale whether arising by reason of the negligence of Casella its employees or agents or otherwise howsoever.

11.2 The Buyer shall indemnify Casella against all liability or alleged liability (and all costs, claims, damages and expenses relating thereto) arising from any infringement or alleged infringement of any patents, registered design, copyright or other rights belonging or allegedly belonging to any third party and arising in connection with any goods manufactured wholly or partly to the Buyer's specification.

### 12.BUYER'S ACKNOWLEDGEMENT

The Buyer acknowledges to Casella that it is better able than Casella to ascertain the potential cost to it and others which might arise from any defect in the goods, departure from specifications or any delay in their delivery to insure appropriately or negotiate suitable exclusions or limitations of liability in contracts with those who purchase from the Buyer. In the case of goods bought for onward sale, Casella has determined the price for the goods on the basis that the exclusions and limitations herein are effective. In the event that the Buyer shall not wish to accept the exclusions and limitations of liability or give the indemnities contained in these conditions or certain of them then it shall, before the contract is made notify Casella in writing with a view to discussing with Casella a reallocation of the risks between them and Casella shall increase the price for the goods to reflect the increased cost to it of insurance premiums arising in connection therewith. THE BUYER ACKNOWLEDGES THAT THE VARIOUS EXCLUSIONS, LIMITATIONS AND INDEMNITIES CONTAINED IN THESE CONDITIONS ARE IN ALL CIRCUMSTANCES REASONABLE.

### 13.PROPERTY AND RISK

13.1 Notwithstanding that the risk in the goods shall pass to the Buyer when Casella ceases to be responsible for them as provided in paragraphs 4.1 to 4.3 of these conditions (entitled "Despatch of Goods"), until payment in full to Casella for the goods has been made the full legal and beneficial ownership of the goods shall be vested in Casella and the Buyer shall keep the goods as bailee for Casella (returning the same to Casella upon request) and shall store the goods separate from all other goods and shall clearly identify the same as the property of Casella.

13.2 Casella hereby authorises the Buyer to sell the goods at any time before payment in full to Casella for the goods shall have been made provided that:-

- any proceeds of sale of the goods shall be kept in a separate account for the benefit of Casella.
- on the resale Casella shall not be bound by any warranty statement or representation of whatsoever kind given by the Buyer to a third party acquiring the goods or be liable for any claim made against the Buyer by any third party or its agent.

### 14.FORCE MAJEURE

In the event of stoppage or reduction of work in the establishment of either the Buyer or Casella or any other interference in the production or transport of the goods owing to strikes, lock-outs, trade disputes, breakdowns in plant or machinery, accidents, unavailability or shortage of materials or energy, any local or national emergency, compliance with request of any local or national authority or any other cause outside the control of Casella or the Buyer then the deliveries may be partially or wholly suspended upon notice being given until normal conditions again prevail. The time of such suspension shall be added to the original delivery periods.

### 15.GOVERNING LAW.

The contract shall be deemed to have been made in England and its interpretation, validity and performance shall in all respect be governed by the laws of England.