



## GENERAL TERMS & CONDITIONS OF SALE Version 2020

### 1 General

- 1.1 These General Terms and Conditions of Sale apply to all offers from and agreements with Topbrands Europe B.V. and its legal successors, as well as companies associated with Topbrands Europe B.V. or with said successors ('Seller'), relating to the delivery of goods and services (together: 'Products') by the Seller to the other party concerned ('Purchaser'). If Purchaser is part of a group of enterprises in any way, 'Purchaser' is taken to refer to all enterprises belonging to that group in any way.
- 1.2 The applicability of the Purchaser's general terms and conditions is hereby explicitly rejected.
- 1.3 Any changes, additions, expansions and/or deviations from these General Terms and Conditions of Sale shall only apply in the event that and insofar as they have been accepted by Seller in writing and shall only be valid in respect of the specific Purchase Agreement in which they have been agreed upon.
- 1.4 Any reference to the territory 'Europe' shall include the territories of the European Union ('EU'), the European Economic Area ('EEA').

### 2 Orders, Delivery

- 2.1 All offers, quotations or proposals issued by Seller shall be without engagement to Seller, unless stated otherwise in writing.
- 2.2 Unless agreed otherwise, the offered prices are always excluding labeling or any other product amendments or requirements on behalf of Purchaser or regulatory requirements.
- 2.3 Documentation materials in or accompanying any offer, quotation, proposal or contract in any form, are, unless stipulated otherwise in writing, for information purposes only and shall not be binding to Seller. Seller will observe the utmost care in providing any statements of prices, numbers, weight, colors, pictures, performance and/or other (technical) specifications of Products. Documentation, samples, drawings or models shown or provided are only indications of Products concerned, and Purchaser cannot derive any rights therefrom. Seller does not guarantee the absence of any deviations. Seller makes a reservation with regard to in the branch usual margins.
- 2.4 Purchaser shall give orders by electronic transfer or mail to Seller, mentioning the desired Products, the desired quantity, the desired delivery date and other relevant features.
- 2.5 All orders are subject to acceptance by Seller, but orders will normally be accepted subject to the availability of the Products and subject to compliance with these General terms and

- conditions of Sale. Seller shall normally acknowledge all orders within five (5) days after receipt of the orders and shall send to Purchaser a confirmation in writing for orders Seller accepts.
- 2.6 A Purchase Agreement is concluded at the moment when the order is accepted or confirmed in writing by Seller or after Seller started to perform the submitted order.
- 2.7 Seller can only be bound by changes or additions to, an expansion of and/or deviation from any Purchase Agreement if confirmed on behalf of Seller by written confirmation by a person who is duly authorized to represent Seller. Such changes, additions, expansions and/or deviations shall only be valid in respect of the specific Purchase Agreement in which they have been agreed upon.
- 2.8 Seller will deliver Products, hand over any documents relating to Products and transfer the ownership of Products as required by any Purchase Agreement.
- 2.9 The Seller should provide the following documents to every delivery:
  - a. Commercial Invoice – original;
  - b. International motor waybill (original): CMR, BL or others;
  - c. Packing list – original;
  - d. Any other documents or requirements are only available after written consent of the Seller, notified in advance of the order, with reasonable time to arrange, such as, but not limited to: Export Declaration, Free sales certificate, Certificate of conformity or Product conformity assessment, other documents as specifically requested by Purchaser, if those are necessary for delivery of concrete kinds of Products to the Customs of the designated territory and process of Customs clearance required for free realization of Products on the designated territory. Any costs of such documents or other export requirements are for account of Purchaser.
- 2.10 Seller will deliver Products free from any right or claim of a third party, unless Purchaser agreed to take Products subject to that right or claim, with the exception of a reservation of title as stipulated in Clause 4.
- 2.11 Seller is required to deliver the sold Products within the agreed delivery period. Seller is entitled to deliver the sold Products by means of partial deliveries. If Seller does not deliver the sold products to Purchaser within the agreed delivery period, Purchaser must give Seller written notice of default and grant a further period of no less than fourteen (14) days to deliver the sold Products.
- 2.12 If any registration of, documentation or other authority requirement regarding the Products



result in a delay of delivery, Seller cannot be held responsible.

- 2.13 Unless agreed otherwise in writing and in case of container deliveries, Seller will appoint and enable the forwarder. The delivery dates depend on the information, communication and ETD of the shipping company and/or forwarder. Seller will load containers palletized, in consultation with Purchaser. Seller normal loading schedule will include 10 block pallets, 14 Europallets, up to 210cm high in a 40' container to achieve most efficient and safe loading. Purchaser will rely on the palletization information of the Seller and Seller will advise on best possible loading contents. Costs or other consequences of non-FCL (Non Fully Loaded Container) will be for Purchaser.
- 2.14 Purchaser bears the risk of the sold Products from delivery onwards. Unless agreed otherwise, delivery is made EXW (ex works) Incoterms 2010. Transfer of ownership of the sold Products is effected under the conditions precedents of payment by placing the sold Products merely under the control (and not in the possession) of Purchaser upon delivery. Ownership of the Products remains vested in Seller in accordance with the provisions in Clause 4, until Purchaser has paid the agreed purchase price in full.
- 2.15 Seller will suitably pack and label the Products for normal transport. The Seller will be responsible for compliance with applicable EU legislation. For additional requirements according to the law of any other designated territory of Purchaser than Europe, parties will cooperate to comply with those requirements. To be compliant to the law of that designated territory, the professional specialty of the Purchaser is leading provided that the product information from the Seller is accurate. The Seller cannot be held responsible for failure in compliance with the law of the designated territory, but will do anything in its power and that may be reasonable expected. Any (additional) labeling will be for responsibility and account of Purchaser.
- 2.16 At Seller's first request, Purchaser is required to take receipt of Products purchased. If Purchaser does not take receipt of purchased Products at Seller's first request, Seller will hold these Products for the account and risk of Purchaser.
- 2.17 In the event of export outside Europe, when Products are not approved by customs within three (3) weeks after presentation to such customs, due to failure of documentation, beyond control and not on reasonable account of the Seller or any other reason, the Products will be returned by Purchaser to Seller in their original state, without transferring any costs to Seller.

### **3 Price, Invoicing and Payment**

- 3.1 Purchaser is required to pay the purchase price stated in the Purchase Agreement by payment of the amount owed to the bank account indicated by Seller, stating the payment references indicated by Seller.
- 3.2 For these purposes, Seller will prepare an invoice for every (partial) delivery and will send it to Purchaser. The Parties hereby agree that Seller may send the invoices to Purchaser both by regular mail and by email.
- 3.3 Purchaser must send complaints regarding the correctness of the invoice in writing to Seller within ten (10) days of the date/dispatch of the invoice. The right to complain about the correctness of the invoice lapses upon the expiry of this period. If Purchaser complains within the aforementioned timeframe and with good reason, Seller will credit the incorrect invoice and send a new invoice to Purchaser.
- 3.4 Except where the Parties have agreed otherwise in writing, Purchaser must pay the amount owed no later than thirty (30) days after the date/dispatch of the invoice. This is a final/absolute payment deadline.
- 3.5 The purchase price for the Products shall be deemed fixed in euros. In the event prices are to be converted to different currencies any costs deriving from exchange rate differences are for the Purchaser.
- 3.6 Purchaser is not entitled to suspend its payment obligation or rely on setoff, without Seller's prior written consent.
- 3.7 If Seller does not receive the purchase price within the payment term, Purchaser will be in default by operation of law. In that case, the following rights accrue to Seller, without Seller having to send a prior notice of default to Purchaser:
- a. From the date of default to the date of full payment, Seller can claim payment of interest equal to the statutory commercial interest applicable at that time, plus 2% per year;
  - b. In addition to payment of the principal sum owed and the default interest, Seller has the right to reimbursement of the extrajudicial costs incurred by it. The Parties establish in this context that, if Purchaser fails to meet the agreed payment deadline, then – without Seller having to send a prior notice of default – Purchaser will owe a penalty of 15% of the principal sum owed (including VAT), without prejudice to Seller's right to claim the extrajudicial costs actually incurred by it;
  - c. If Seller has to proceed to serve a summons at the address of Purchaser, then – without Seller having to send a prior notice of default – Purchaser will incur an additional penalty of 15% of the principal sum owed (including VAT), without prejudice to Seller's right to



claim the judicial costs actually incurred by it (including, but not limited to, court registry fees and attorney's fees, attachment costs and disbursements that have actually been incurred).

- d. At Seller's first request, Purchaser will provide further security and provide Seller with insight into its assets, creditors and debtors, in order to enable Seller to recover the outstanding amounts from Purchaser, by enforcing this further security if necessary.

The provisions in this clause 3.7 are without prejudice to Seller's statutory right to levy prejudgment/executory attachment on Purchaser's assets.

- 3.8 Seller is entitled to set off all claims with a monetary value that Purchaser has against Seller with claims that Seller have against Purchaser.
- 3.9 Purchaser hereby gives Seller prior consent to transfer or pledge the claims that Seller has against Purchaser.

#### **4 Retention of title**

- 4.1 Notwithstanding the actual delivery, the title to Products will pass to Purchaser only after it has fully paid any and all amounts in connection with Products delivered or to be delivered due to Seller, including the price for Products, any surcharges, interest, taxes and expenses that may be due in accordance with the Purchase Agreement and as well as any activities that may have been performed or are to be performed by virtue of the Purchase Agreement. The subject to retention of title delivered Products will be for the account and risk of Purchaser as from the moment Purchaser has taken receipt of the goods in actual delivery.
- 4.2 As long as the title to Products has not passed to Purchaser, Purchaser shall not be entitled to sell or deliver Products to third parties or have third parties use them, to pledge them or otherwise encumber them in any way or position them out of its control. Purchaser may resell Products supplied in the normal conduct of its business operations, provided that the claim for payment of the purchase price due by the third party is pledged to Seller.
- 4.3 Purchaser shall preserve and store Products delivered subject to retention of title carefully and as Seller's recognizable and identifiable property and have these Products insured against the risk of normal business risks. Upon Seller's first request to that effect, Purchaser shall assign any and all rights towards the insurers involved to Seller or pledge its claim by virtue of the aforementioned insurance policy to Seller.
- 4.4 If and as long as Seller is the owner of Products, Purchaser shall notify Seller without delay in the event that any part of Products should be lost or

damaged, or in the event that Products should be seized and/or other claims are laid on (any part of) Products. Furthermore, Purchaser shall inform Seller upon its first request where Products in respect of which Seller has retained its title, are located.

- 4.5 Seller shall at all times be entitled to reclaim Products delivered to Purchaser subject to retention of title without any notice of default being required, in case Purchaser has not fulfilled its obligations or Seller expects that Purchaser will not fulfil its obligations. Purchaser hereby unconditionally and irrevocably gives permission and shall lend every co-operation to Seller or to a third party designated by Seller, to enter all locations where Seller's property will be located and to remove said property if and when Seller wishes to exercise its rights of ownership. The costs of such reclaim will be for the account of Purchaser.

#### **5 Conformity, Inspection, Product Warranty**

- 5.1 The Products delivered must conform with the Purchase Agreement. The Products delivered conform with the Purchase Agreement if the goods supplied conform with the agreed specifications/characteristics stated in the offer of Seller, on the understanding that minor deviations and/or deviations that are customary in the sector (which includes, in any event, deviations in number of up to 10%) and minor, customary, or unavoidable differences in quality, colour, measurements, thickness, weight, etc. are permitted.
- 5.2 Purchaser declares that the products purchased are suitable for the use intended by Purchaser if the products supplied meet the agreed specifications including the corresponding permitted deviations.
- 5.3 Purchaser shall inspect Products delivered (or cause Products to be inspected) carefully immediately upon delivery, taking into consideration the nature of Products (referring to the sales of remnant products).
- 5.4 Seller shall be informed in writing of any complaints concerning Products, specifying (i) Products concerned, (ii) the date of purchase and (iii) the nature of the defect ('FIR'). In case of visible deficiencies in Products and/or failing quantities of Products, Purchaser must record these deficiencies and/or shortfalls on the relevant transport document and submit a FIR to Seller within ten (10) days after delivery of Products. If the defect or failure was not in reasonableness and fairness detectable during the inspection, a FIR must be send to Seller within ten (10) days after the date on which the shortcomings and/or shortfalls became known or might reasonably have been expected to become known to Purchaser.



- 5.5 Any failure by Purchaser to inspect the delivered Products in conformity with Clause 5.3 and/or to declare default within the time specified above in conformity with Clause 5.4, shall result in the loss of any claims whatsoever in this respect.
- 5.6 Seller warrants that Products are (i) in conformity with the agreed specifications, (ii) free from defects in materials and workmanship and (iii) in conformity with the applicable European and national laws and regulations and good manufacturing practices during the shelf life/expiration date of the Product provided that Products have been treated, processed, preserved and stored sound taking into consideration the nature of Products and the applicable instructions for storage. When Purchaser requires specific shelf life information or a specific remaining shelf life at the moment of delivery, Purchaser has to inform Seller of such requirement in advance of the order. Seller will determine the shelf life and expiry of the ordered Products (with reference to the first expiring batch of the order) and provide Purchaser with such information. After which approval of Purchaser these Products are deemed accepted.
- 5.7 Except where the parties have agreed otherwise in writing, Products are not fit for any particular purpose or use and do not possess any particular qualities, and Seller will accordingly not be liable for any lack of conformity of Products.
- 5.8 The warranty does not cover the following causes of damage:
- minor deficiencies or deviations, which fall within the levels of tolerance as accepted in good commercial practice or considered to be customary in the sector;
  - Products have been used for a purpose other than that for which they normally or specifically are intended;
  - Products in the opinion of Seller have been used, treated, processed, preserved, stored or transported injudiciously;
  - the defect is caused by normal wear and tear;
  - the damage is caused by negligence of Purchaser or any third party, or by having acted contrary to Seller's instructions, indications and advice;
  - the defects ensue from any new or changed government regulation with regard to Products or the manufacturing or use thereof;
  - unsuitable environmental conditions, excessive or inadequate heating or excessive air conditioning or other irregularities.
- 5.9 The warranty shall not apply in case Purchaser has not fulfilled its obligations towards Seller (financially and otherwise).
- 5.10 In the event of a justified warranty claim during the warranty period and a timely notification thereof, Seller shall at its sole discretion remedy this claim by (i) replacing the non-conforming Products with conforming Products or (ii) by sending a credit invoice and repaying the paid purchase price.
- 5.11 If Seller delivers Products to Purchaser which Seller has obtained from its supplier(s), Seller shall never be bound by any warranty or liability towards Purchaser that extends beyond the warranty or liability that Seller can claim of its supplier(s).
- 5.12 Products must be made available to Seller for examination upon first request, freight pre-paid by Purchaser. Purchaser shall not be entitled to return any Products without a Material Return Authorization of Seller.
- 5.13 Purchaser's exclusive remedy and Seller's total liability for breach of the warranty provided above shall be those set in forth in Clause 5.10. Purchaser explicitly waives all other rights or claims it may have against Seller under the applicable law.
- ## 6 Liability, indemnification
- 6.1 The parties have agreed that, in view of the nature of their legal relationship, the financial capacity of both parties and the price of Products supplied, awarding full damages would lead to evidently unacceptable consequences. The limitation of liability set out in this Clause 6 will only be inapplicable if the damage results from the gross negligence or willful misconduct of the management of Seller.
- 6.2 Except as otherwise provided herein, in the event of any liability of Seller hereunder regardless the cause in law, the amount of damages shall in any case be limited to the amount that Seller receives from its insurer under its commercial liability insurance in relation to the damage for which Purchaser has held Seller liable.
- 6.3 If no insurance payments are made in relation to the damage in question, the liability of Seller is limited to the purchase price actually received by Seller in respect of supplied Products that caused the damage.
- 6.4 In no circumstances will Seller be liable to Purchaser for any special, consequential, indirect, criminal or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, damages caused by customers, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability, and regardless of whether it was advised in advance of the possibility of such damages arising in any way from the Purchase Agreement or otherwise.
- 6.5 Save where performance by Seller is permanently impossible, Seller's liability on the



grounds of imputable failure to comply with the Purchase Agreement or otherwise arises only if Seller receives notice of default in writing from Purchaser immediately, in which a reasonable period is allowed to remedy the failure, and Seller remains in default of its obligations after the aforesaid period.

- 6.6 Any claim for damages against Seller is extinguished automatically twelve (12) months after the inception of the claim.
- 6.7 Purchaser indemnifies Seller against any claims and impending claims by third parties against Seller, the costs (including reasonable legal fees) of defense against such claims, and any obligations Seller has to third parties if such claims, costs and obligations are based on, arise from or in connection with any act or omission or any use of Products by Purchaser or any third party engaged or employed by Purchaser and/or any failure to properly perform the terms of the Purchase Agreement.

## **7 Subcontracting - transfer**

- 7.1 Without explicit prior written consent of Seller, Purchaser shall not subcontract the Purchase Agreement or any part thereof to third parties nor transfer his obligations arising from the Purchase Agreement or a part thereof to third parties, nor use any other employees than his own staff (for instance employees made available (hired out) for the execution of the Purchase Agreement).
- 7.2 Seller shall have the right to attach conditions to any consent to be given by Seller. Consent given by Seller shall not release the Purchaser from any obligation arising from the Purchase Agreement.
- 7.3 Purchaser shall compensate any and all damage and costs caused by non-observance of the provisions of the previous paragraph of this clause to Seller and shall hold harmless and indemnify Seller against any claims by third parties in this respect.

## **8 Confidentiality**

- 8.1 Both Seller and Purchaser are required to (cause to) keep secret and not to use any and all (i) information which is qualified/marked by the providing party, or should have been reasonably understood by the receiving party as secret/confidential and (ii) Knowhow received from the other party, in so far as such data were provided in confidence or are of an evidently confidential nature. 'Knowhow' means a package of non-patented practical information, resulting from experience and testing by the party, which is secret, substantial and identified: in this context, 'secret' means that the information is not generally known or easily accessible; 'substantial' means that the information is significant and useful to the other

party for the use, sale or resale of the contract goods or services; 'identified' means that the information is described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality ('Confidential Information');

- 8.2 The obligation of confidentiality does not apply to information and data:
  - a. that are in the public domain, other than through the actions of the party concerned (directly or indirectly);
  - b. that are disclosed pursuant to a statutory obligation or a final and conclusive judgment;
  - c. regarding which a written release from the obligation of confidentiality has been granted.

## **9 Brand & private label**

- 9.1 Products developed and/or produced by or on behalf of Seller are subject to the Brand and Private label department. The following product groups are distinguished:
  - a. Branded products: developed and produced by or on behalf of Seller under (un)registered trademarks and designs, owned by Seller ('Branded Products').
  - b. Fancy label products: non-branded product developed and produced by or on behalf of Seller ('Fancy label products').
  - c. Private label products: developed and produced by or on behalf of Seller under the (un)registered trademarks and designs, owned by Purchaser.
- 9.2 In case the Purchaser has committed to a minimum purchase of a Product and/or its components, Purchaser is obliged to purchase such Products within the agreed delivery period. If Purchaser fails to take the Products or becomes aware of such situation, Purchaser will inform Seller without delay. Seller will at its sole discretion determine the most suitable and reasonable solution to finish the commitments open.
- 9.3 Seller has and will hold complete product files available as required by applicable European legislation, accordingly products are labelled with Purchasers contact information as Responsible Person in terms of applicable product compliance legislation. In cases where products are labelled with Sellers Responsible Person, Purchaser will still hold product files available and will commit to sharing these files within 72 hours after an authority request.
- 9.4 Seller is never held to share product information or other related documentation, in which the production facility and/or premises are disclosed.
- 9.5 With due observance of clause 9.3 and 9.6 Seller will provide Purchaser with all necessary information regarding product quality and



specifications, as may be reasonably requested in case of requests from governmental or regulatory bodies and/or authorities. Purchaser will inform Seller about required documentation.

- 9.6 Non-disclosure: with due observance of clause 8 (Confidentiality) Confidential Information such as, but not limited to product specifications, other product quality and/or technical information or test reports will only be disclosed on request by Purchaser under specification of the mandatory requirements of the authorities and governmental or regulatory body. Purchaser has the obligation to notify Seller with a copy of the disclosing Confidential Information to governmental or regulatory bodies, or authorities.
- 9.7 All Confidential Information disclosed by or on behalf of Seller to Purchaser or its representatives shall remain the property of Seller. Parties acknowledge it shall not be entitled to any right or license in respect of the Confidential Information. No licenses, ownership or rights under any patent, copyright, trademark, trade name, trade secret or other intellectual property, rights forthcoming from product registrations or other rights relating to the Confidential Information are granted to Purchaser, or can be derived from or can be interpreted as such by these General Terms & Conditions of Sale. In such cases, rights will be hereby automatically transferred into possession of Seller.
- 9.8 Purchaser will refrain from using the Confidential Information or any information derived therefrom for its own purposes or benefits, which may cause any disadvantage, liability, loss or damages to Seller.

## 10 Private label products

- 10.1 Nevertheless which agreements/ arrangements are made upon Private label products, Parties shall always act as independent contractors in the execution of the Purchase Agreements, and that no agency relationship, license, general partnership or joint venture arises. Furthermore it does not constitute one party as representative or agent of the other party for any purpose whatsoever; except for those specifically stipulated in written notices. Neither party is granted any right or authority to assume or create any obligation or responsibility in behalf of the other party.
- 10.2 In no case the Seller is obliged in any way to pay for expenses, fees or any other compensation for the use of Purchasers designs or trademarks.

## 11 Intellectual Property rights

- 11.1 All (intellectual property) rights, whether existing as of the date of the Purchase Agreement or in the future, relating to Products,

including, without limitation, all names, trademarks, copyrights, patents, mask works, trade secrets, Knowhow, technology, data, designs, specifications, recipes, ingredients, composition, materials, processes, computer software and related documentation and source code and other (intellectual property) rights and knowhow, are and shall remain the exclusive property of Seller or its licensor.

- 11.2 The Purchaser is not authorized to make use of Seller's trademarks, trade names, symbols, logos and (marketing) materials and shall not present itself as a party connected to Seller, without the explicit approval in writing from Seller.
- 11.3 Purchaser undertakes not to infringe or to attack Seller's (intellectual property) rights and Knowhow in any way, directly or indirectly, by use or otherwise and acknowledges that Seller is the beneficiary with regard to these rights.
- 11.4 Nothing in the Purchase Agreement shall constitute or deemed to constitute a transfer of any (intellectual property) rights and Knowhow to Purchaser.
- 11.5 In the event that one or more of the natural persons and legal entities affiliated with Purchaser act contrary to one or more of the prohibitions referred to in this Clause 11, this conduct will be considered to be a breach by Purchaser.

## 12 Sales outside territory of Europe

- 12.1 Unless otherwise stated in writing, Seller does not guarantee any consent for sales of the intellectual property owner of Products to territories outside Europe nor the compliance of the Products with the laws and regulations of territories outside Europe.
- 12.2 If Purchaser is located outside Europe, or resells the products to parties outside Europe, Purchaser will be sole responsible for required customs documentations and/or national product registrations, unless agreed otherwise in writing. However, any product or brand registration to be done by Purchaser are subject to prior written approval of Seller.
- 12.3 Regarding product compliance, labelling and shelf life or other national requirements, Purchaser has sole responsibility to such performance. Seller will do anything in its power to support Purchaser in conforming to product compliance in the designated territory.

## 13 Product recall

- 13.1 Purchaser agrees to maintain complete and accurate books and records as they relate to Products and will maintain a database which facilitates the ability to verify the history, location, or application of Products by means of documented recorded identification, and to



comply with any and all traceability programs in effect at any time as initiated by Seller.

- 13.2 Seller shall promptly notify Purchaser if any of Products becomes the subject of a voluntary or Government mandated product recall, correction or removal and Purchaser shall promptly comply with and any and all such Product recall, correction or withdrawal notices and provide reasonable assistance to Seller in connection with any such recall, correction or removal ("Product recall").
- 13.3 The determination of a Product recall, correction or removal is the sole responsibility of Seller and Purchaser may not initiate any Product recalls without prior written consent of Seller.
- 13.4 Purchaser will notify Seller immediately and confirm such notice in writing if it obtains information indicating that any of Products may have to be recalled, either by virtue of the applicable law or good business judgment.
- 13.5 Purchaser acknowledges it does not have any authority to initiate any Product recalls, unless required under the applicable laws as a result of government instructions and/or confirmed in writing by Seller.
- 13.6 Seller will be responsible for communicating with the Regulatory Authorities with respect to the Product recall, except where Purchaser is required by the applicable law to communicate with the local Regulatory Authority in which case Purchaser shall be responsible for communicating with the local Regulatory Authorities but after discussing the proper response with Seller and obtaining Seller's prior written approval for such response.
- 13.7 In the event of a Product recall, Purchaser will cooperate fully with Seller in effecting such recall, correction or removal including without limitation, promptly contacting any customers and/or consumers of Purchaser of the concerned Product(s) that Seller desires to be contacted and promptly communicating to such customers and/or consumers the information or instructions Seller desires to be transmitted.
- 13.8 All costs and expenses associated with implementation of a Product recall shall be borne by: (a) Seller, if the Product recall results from the fault attributable to Seller; or (b) Purchaser, if the Product recall results from the fault attributable to Purchaser; provided, that each party will provide, at its expense, any assistance reasonably requested by the other party in connection with the implementation of any Product recall pursuant to this section.

#### **14 Social responsibility**

- 14.1 Seller has implemented the Amfori "The Business Social Compliance Initiative" to improve working conditions in their global supply chain. Purchaser hereby acknowledges that it has been made aware of, and fully adhere

to, the contents and requirements of the Amfori BSCI Code of Conduct and related "Terms of Implementation" and that such documents will be deemed to form an integral part of these General Terms and Conditions of Sale.

#### **15 Force majeure**

- 15.1 Any non-performance by Seller shall be excused to the extent that performance is rendered impossible or commercially impracticable by fire, flood, hurricane, typhoon, earthquake, war, acts of terrorism, riots, governmental acts or orders or restrictions, strikes, lockouts, lack of raw materials, failures of suppliers or any other reason where failure to perform is beyond the reasonable control of, and is not caused by the acts, decisions, negligence or willful misconduct of Seller.

#### **16 Miscellaneous**

- 16.1 In the event that particular provisions or requirements of these Terms and Conditions of Sale are in violation of Dutch law or mandatory rules of the law of the country in which Purchaser is domiciled, the validity of other provisions or requirements shall not be affected thereby and shall be enforced and remain in full force and effect. In the place of the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of the Parties and the economic result aimed for by them in a legally effective way.
- 16.2 The failure of either party to enforce at any time one or more of the Terms and Conditions of Sale shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.
- 16.3 These Terms and Conditions of Sale are in the English language only, which language shall be controlling in all respects, and all versions in any other language shall be for accommodation only and shall not be binding upon the parties.

#### **17 Termination**

- 17.1 Seller shall be entitled to terminate the Purchase Agreement with immediate effect by giving written notice by registered mail if the Purchaser:
- commits a breach of any of the terms or conditions of the Purchase Agreement and such breach cannot be cured or is not cured within fourteen (14) days after written notice specifying the default;
  - becomes bankrupt, requests suspension of payment, is declared commercially incompetent by order of the court, enters into liquidation, compounds with its creditors or is unable to pay its debts as they mature or is involved in any insolvency or



- reorganisation proceedings supervised by a court;
- c. commits an act of gross negligence, fraudulent or willful misconduct in the performance or non-performance of its duties pursuant to the Purchase Agreement.

## **18 Applicable law, Dispute resolution**

- 18.1 These Terms and Conditions of Sale, any individual Purchase Agreement and any other issue between Parties in connection with the sale of Products, shall be governed by the laws of the Netherlands.
- 18.2 The relations of the Parties not governed by these Terms and Conditions of Sale shall be subject to the rules of the United Nations Convention on Contracts for International Sale of Goods executed in Vienna on April 11, 1980, Rules of INCOTERMS 2010, and with regard to the extent not governed by international acts specified in the present clause – to Dutch law.
- 18.3 District Court of Rotterdam, the Netherlands, ('Designated Court') shall, on an exclusive basis, settle all disputes arising in connection with Terms and Conditions of Sale, Purchase Agreements or and other issues resulting therefrom, without prejudice to Seller's right to lodge claims to which it is entitled with (i) the Netherlands Arbitration Institute ('NAI') in accordance with the then current Arbitration Rules, for the rendering of a decision by arbitration or (ii) the court of the country in which Purchaser has its registered office or place of business (the 'Alternative Fora'), instead of via the Designated Court.
- 18.4 In the event that Seller submits its claims to the NAI, the arbitral tribunal shall be composed of one arbitrator. The place of arbitration shall be Rotterdam. The arbitral procedure shall be conducted in the English language.
- 18.5 In the event that Seller submits its claims to one of the Alternative Fora referred to, Purchaser will acquire, by operation of law, the right to lodge a counterclaim with the Alternative Fora selected by Seller.
- 18.6 If a case is brought before the Designated Court than any other court/court seized at an earlier stage will stay its judgment until the Designated Court declares that it does not derive any jurisdiction.
- 18.7 Provisional or protective measures may only be requested at the Designated Court, without prejudice to Seller's right to request provisional or protective measures at the District Court that has jurisdiction in the country in which Purchaser has its registered office or place of business.

\* \* \*