



GENERAL CONDITIONS OF SALE

1. General Provisions

1.1 In addition to the terms and phrases defined elsewhere in these General Conditions of Sale (as defined below), the terms and phrases listed below shall have the meanings respectively assigned to them or specified in this Article 1.1:

- **"Purchaser"**: the physical or legal person from whom the Seller (as defined below), receives a purchase order;

- **"Contract"**: the purchase order of the Purchaser, accepted by the Seller (order confirmation) and/or set out in the confirmation of contract form (if any), including the General Conditions of Sale (as defined below);

- **"Delivered at place and/or "Free Carrier"**: the rights and duties of the Purchaser and Seller (as defined below) are governed as provided for, with reference to the acronyms **DAP and/or FCA**, of **Incoterms® 2020** and subsequent amendments or additions;

- **"Parties"**: the Purchaser and the Seller jointly;

- **"Products"**: the products of the Seller are as appear in catalogues year on year as published and/or described in the Seller's website;

- **"Seller"**: **APSA Italia srl**, with registered office at 11/B via Caselli - 44124 Ferrara (Italy), Tax and VAT Code 09684320964;

- **"Price"**: the price of products marketed by the seller, as agreed from time to time between the seller and the purchaser, through the seller's marketing agents.

1.2 The terms and conditions set out below (the **"General Conditions of Sale"**) form an integral and substantive part of each Contract concluded between the Seller and the Purchaser for the purchase of Products and shall prevail over any conditions prepared by the Purchaser, unless the latter are expressly accepted in writing by the Seller (to be set out in the contractual documentation).

The Seller reserves the right to amend, add to or vary the General Conditions of Sale, by attaching such amendments to offers or to any other written communication with the Purchaser. Where the amendments, additions or variations to the General Conditions of Sale are not accepted by the Purchaser within 15 days from the date of notification, the previously accepted General Conditions of Sale shall continue to apply, without prejudice to the Seller's right to withdraw within the successive 30 days.

2. Offers and Orders

2.1 An offer made to the Purchaser by agents, brokers or other intermediaries and any order proposal submitted by them to the Seller, shall not be binding on the latter until the Purchaser's order has been accepted by the Seller pursuant to the following Article 2.2.

2.2 An order placed by the Purchaser shall not be deemed to have been accepted until confirmed in writing by the Seller (**confirmation of order**). In the event the Seller does not confirm the order in writing, the issue of an invoice or the execution of the order by the Seller shall constitute acceptance.

2.3 These General Conditions of Sale are set out on the web site: **www.apsaitalia.com** and constitute an integral element of each contract and/or order confirmation, in which they are expressly incorporated by reference thereto. Fulfilment of the order in accordance with the confirmation sent to the customer by the Seller shall imply, even in the absence of signature, knowledge of and acceptance of these general conditions.

3. Delivery Terms

3.1 Unless otherwise agreed in writing between the parties, delivery of the Products shall be effected in accordance with the provisions of the **DAP and/or FCA** clauses provided for under **Incoterms 2020**, as specified from time to time in the contract or confirmed by written order. The Seller shall effect delivery by placing the Products at the disposal of the Purchaser under the conditions and at the place specified in the Contract ("Delivery").

In the event that a final delivery deadline is agreed in writing, the Seller shall not be liable for

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any delay resulting from *force majeure* or unforeseen or extraordinary events (*i.e.* accidents, strikes, natural disasters, transport interruptions, difficulty in sourcing raw materials, objective impossibility for production facilities to operate, etc.).

3.2 The Seller shall not be liable for any loss or damage to Products after Delivery; in no circumstances shall the Purchaser be exempt from the duty to pay the purchase price of the Products once they have been Delivered.

3.3 Without prejudice to the remedies set out in Article 9 below, Delivery may be suspended in all circumstances where the Purchaser has failed to fulfil the duty of payment of the purchase price of the Products.

3.4 Unless otherwise agreed between the parties, all timeframes for the delivery and supply of Products shall be deemed to be indicative and accepted by the Seller subject to all customary tolerances. The Delivery date – being in any case indicative – is solely and only that specified in the confirmation of the order by the Seller and/or in the contract confirmation form, if any.

3.5 In the event of a delay in Delivery which exceeds customary tolerances, the Purchaser may cancel only that part of the order relating to those Products for which Delivery has not taken place within 3 (three) business days following the date on which the Seller receives the Purchaser's notice of cancellation, to be sent by registered mail with acknowledgement of receipt or certified e-mail.

3.6 The Purchaser may not cancel their order, nor withdraw from the Contract, in the event of a delay in Delivery resulting from *force majeure* events as set out in article 6 below, provided the delay in delivery does not exceed 5 working days.

3.7 The Seller may withdraw from the Contract on written notice to the Purchaser in the event of *force majeure* events as set out in article 6 below.

3.8 If delivery does not take place for reasons imputable to the Purchaser, it shall be deemed to have been effected, for all purposes (including the commencement of payment terms and issue of the invoice), on simple notice to the Purchaser that the Products are ready for collection; one day after such notice is given, warehousing and transport costs shall begin to accrue and the Seller shall not in any way be liable for the loss of, damage to or even loss in value of the Products.

3.9 The Purchaser undertakes to inform the

Seller of a failure to deliver the Products at the delivery address indicated on the transport document or delivery of the Products to a location different to that indicated in the transport document within **8** business hours following the scheduled delivery date at the delivery address, by registered mail with acknowledgement of receipt or certified e-mail to which a duly signed copy of the transport document shall be attached. On receipt of the aforementioned notification, including the documentation, the Seller shall adjust the invoice issued by applying VAT in terms of Presidential Decree No. 600/1973. It is understood that the Purchaser shall indemnify the Seller for taxes, surtaxes, interest and penalties of any kind, as well as legal fees in the event of assessments made against it by the Tax Authority arising from such failure to give written notification or from the delivery of the Products to an address different from that indicated in the transport document. The Purchaser, having acknowledged the notification which the Seller required be signed by the carrier, also undertakes to inform the carrier itself of any change in or amendment to the destination of the Products. Failure to comply with the above obligation shall result in the Seller charging the Purchaser for any taxes, surtaxes, interest and penalties of any kind, as well as legal fees in the event of findings by the Tax Authority consequent upon such lack of notification.

3.10 Except in the case of wilful misconduct or gross negligence, the Seller shall not be liable for any damages arising from the delay in or failure of Delivery (total or partial) of the Products.

3.11 Where the Purchaser is responsible for the transport of the Products, loading shall take place at the time indicated by the Seller. All costs and damages consequent upon a delay by the Purchaser in loading the products, including those where the Seller might be liable vis-à-vis third parties, must be reimbursed to the Seller by the Purchaser within seven days of communication by the Purchaser of the relevant information.

3.12 Acceptable weight variations – tolerances – absolute allowance. With regard to the quantities agreed in the contract, any difference between the loading/unloading weights shall be deemed to be within tolerance limits expressly confirmed in the contract confirmation (if any) or

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in the order confirmation. Within these limits (allowance), no adjustments, whether increases or decreases, in the prices of the products are permissible. The allowance is intended to be absolute, with the result that any price adjustments shall be applicable to products exceeding or falling short of the limits as indicated above.

4. Prices and Payment Terms

4.1 Unless otherwise agreed in writing between the parties, the prices of the Products from time to time agreed between the Purchaser and the Seller shall be deemed to be inclusive of transport; accordingly, any other charges or costs relating to dispatch, delivery and/or transport of the Products shall exclusively be borne by the Seller. Where transport is to be borne by the Purchaser, the necessary funding to meet any charges payable by the Purchaser shall, where required, be advanced by the Seller to the Purchaser; for example, but not limited to, those charges and costs that include the costs of additional packaging, transport costs, ancillary charges, taxes, stamp duties, customs duties and any other additional charges not included in the prices.

4.2 Product prices are exclusive of VAT by law, and VAT must be paid in accordance with the details set out in the invoice.

4.3 In addition to any other remedies provided for by law and/or by the Contract, the Seller may apply default interest on late payments pursuant to the provisions of Legislative Decree No. 231 of 2002.

5. Warranty Terms

5.1 The Seller warrants that the Products comply with the food safety requirements provided for by current applicable regulations.

The Seller warrants that the products shall be free of faults and defects for a period of 12 months from delivery, provided such defects are notified to the Seller timeously, in accordance with the following article 5.2.

The existence of any claim shall not entitle the Purchaser to suspend or delay payment due in terms of the Contract, wholly or in part.

The warranty shall be applicable within the limits set by article 1495 of the Civil Code, without prejudice to the further limitations set out in this article, as well as customary tolerances. Any

specifications or data contained in the Seller's catalogues, brochures, and leaflets are merely for indication purposes and are not binding. The Purchaser shall return products found to be defective for refund/replacement. Products replaced under warranty shall be subject to the same warranty for a period of six months commencing from the date of substitution.

5.2 This warranty operates exclusively on condition that: 1) the customer shall report in writing any faults and/or defects in products which are visible and/or evident, and within the mandatory time-limit of 8 days from date of delivery; 2) the customer must report in writing any latent faults and/or defects in the products which become apparent after their use within the mandatory time-limit of 8 days from discovery and in any case, not more than one year after delivery; 3) the customer has provided suitable and sufficient "technical specifications" with which the product does not comply, the final use of the product being irrelevant for this purpose; 4) the customer has used the product in accordance with the proper instructions and technical standards.

5.3 In terms of the warranty obligation, the Seller undertakes to replace the faulty and/or defective product within the timeframe determined in the Contract and without any further duty to compensate for any direct and/or indirect and/or consequential damages suffered by the Purchaser and/or third parties arising from defects in the Products, without prejudice to the mandatory provisions of the law. In any case, the Parties acknowledge that the Seller's total liability to the Purchaser shall be limited to the price paid by the Purchaser for the Products which gave rise to the liability of the Seller.

5.4 It is understood that the abovementioned warranty supersedes and replaces the warranties or liabilities provided for by law, and excludes any further liability by the Seller (whether contractual or non-contractual) that may arise in any way from the Products supplied (for example compensation for damages, loss of earnings, recall campaigns etc.).

In any event, the Seller shall not be held liable for any faults and defects in the products sold; in particular: 1) where high-quality raw materials are used, the Seller may not be held liable for any faults or defects in the raw materials used for its



products; 2) the Seller assumes no liability whatsoever with regards to the final use of the product, in respect of which the customer acts and decides with full autonomy and awareness, or is not deemed to be liable for the suitability or otherwise of the product with respect to the so-called “conditions of use” for which the customer is solely liable; 3) the Seller is not liable for any faults and/or defects in the product resulting from abnormal deterioration, negligent storage on the part of the customer, incorrect use in application and/or installation, replacements and/or maintenance carried out by third parties, for physical and/or chemical and/or mechanical and/or electrical reasons extraneous to the product as sold.

6. Force Majeure

6.1 The Seller shall not be held liable for any damages arising from any breach of any provision of this Contract, or any delay or failure to perform, wholly or in part, of the obligations under this Contract, where and to the extent that such delay or failure to perform is imputable to circumstances beyond the reasonable control of the Party.

Such events shall include – without limitation – natural disasters, measures adopted by public authorities, fire, earthquakes, floods or other natural disasters, epidemics, pandemics, embargos, insurrections, riots and other civil disturbances, military operations or war, legal or governmental measures, strikes, shortages of necessary supplies and/or unavailability of the means of transport or other contingencies, shortages of and/or problems in the supply of raw materials, beyond the control of the Party involved.

6.2 Any *force majeure* event shall result in the suspension of performance under the contract for the duration of the *force majeure* event, with the consequent automatic extension of the time limits for the fulfilment of obligations.

The Seller shall take all measures possible to minimise the consequences of this delay in accordance with principles of good faith and contractual fairness.

6.3 When a *force majeure* event occurs, the Seller shall immediately give notice in writing, and in any event not more than 30 (thirty) days from its commencement. The notification shall include a precise description of the *force majeure* event and the reasons giving rise to the delay or

inability to perform the contractual obligations.

6.4 Where a *force majeure* event lasts longer than 3 months, the Seller shall have the right to terminate the Contract giving notice of at least 10 days by registered letter with acknowledgement of receipt or certified e-mail.

In such circumstances, the relative consequences and the appropriate restitution of the respective contractual performances shall be negotiated in good faith, taking account of the stage reached in the execution of the contract at the time of its termination.

7. Protection of Personal Data

7.1. For purposes of execution of the Contract, the Parties undertake to comply with all the obligations set out in in the General Regulation (EU) 2016/679 concerning the “protection of natural persons with regards to the processing of personal data and the free movement of such data” (hereinafter the “GDPR”), as well as, to the extent that it is applicable, to Legislative Decree 196/2003 (“Privacy Code”), as most recently amended by Legislative Decree 101/2018 and to the measures of the Data Protection Authority for the protection of personal data.

7.2 On acceptance of this Contract, both Parties, within the ambit of their respective responsibilities, acknowledge that their own personal data and/or that of their employees and/or contractors, involved in activities for the implementation of the Contract, may be communicated to the other party and processed by the latter in their capacity as independent Data Controller strictly for purposes related to the establishment and implementation of the Contract.

7.3 In particular, the Purchaser acknowledges that its own personal data and/or that of its own employees and/or contractors, involved in activities for the implementation of the Contract, may be processed by the Seller in its capacity as independent Data Controller for the purposes and in the manner indicated in the “Customer Information Sheet” provided pursuant to articles 13 and 14 of the GDPR available on the website **www.apsaitalia.com** under the heading Privacy, which the Purchaser undertakes immediately to draw to the attention of its own employees and/or contractors.



8. Termination of the Contract

8.1 The Seller shall have the right to terminate each Contract with the Purchaser with immediate effect pursuant to article 1456 of the Civil Code by notice sent via registered mail with acknowledgement of receipt or by certified e-mail in which it indicates that it intends to rely on this express termination clause, in the following circumstances:

- a) where the Purchaser has failed to fulfil its obligations in terms of articles 3.9, 3.11, 4 and 7 of these General Conditions of Sale;
- b) where the Purchaser is responsible for a material breach of the contract.

8.2 The Seller has the right to withdraw from each Contract with immediate effect via notice sent to the Purchaser by registered mail with acknowledgement of receipt or Certified e-mail, in which the Seller indicates it intends to rely on this clause:

- a) in the circumstances referred to in articles 1.3, 3.7, 6.1.;
- b) where the Purchaser becomes subject to execution, winding-up or liquidation procedures;
- c) where the Purchaser's asset, business and financial position are such as to give rise to a reasonable presumption that the Purchaser is in a state of crisis;
- d) where the shares and/or the proportion representing the majority or control of the share capital of the Purchaser, where constituted in the form of a company, are directly or indirectly transferred, alienated or pledged as security.

9. Retention of ownership

9.1 The Seller shall retain ownership of the Products until the agreed price is paid in full.

Accordingly, the purchaser is required to i) use the goods properly, in accordance with their intended purpose; ii) not transfer them to third parties except with the express prior authorisation of the Seller. In the event of full or partial non-payment by the Purchaser for supplies by the due date, The Seller shall be entitled to recover possession of the products delivered on simple request. Notwithstanding the above, the Purchaser shall be liable for any damage and loss occurring after delivery, even if due to unforeseeable events, *force majeure* or any other event not imputable to the Purchaser.

10. Applicable Law – Competent Court

10.1 These General Conditions of Sale and each Contract agreed between the Seller and the Purchaser are governed by Italian law.

10.2 Any dispute arising between the parties concerning the interpretation, validity or implementation of these General Conditions of Sale and each Contract shall be subject to the exclusive jurisdiction of the High Court of **Ferrara**. For purposes of interpreting delivery terms and other commercial terms as may be used, the Parties shall have reference to **Incoterms® 2020** as subsequently updated

11. Trademarks and other distinctive marks of the Seller

11.1 The Purchaser is required to use the trademarks, names or other distinctive marks of the Seller, solely for purposes of identifying and advertising the Products, it being understood that such use is made exclusively in the interests of the Seller. However, any use of trademarks, names or other distinctive signs of the Seller on the Purchaser's letterhead, advertising or other materials otherwise intended for third parties, must be agreed with the Seller in advance and in writing.

11.2 The Purchaser shall not insert the trademarks, names and distinctive marks of the Seller in its corporate name or web domain. In any case, the Purchaser undertakes not to register the trademarks and/or distinctive signs of the Seller, including its web domains.

11.3 The right of the Purchaser to use the trademarks, names or other distinctive signs of the Seller, as set out in article 11.1 above shall cease immediately on the expiry or termination, for any reason, of these General Conditions of Sale or any other Contract agreed between the Purchaser and the Seller.

11.4 The Purchaser shall inform the Seller of any infringements of the trademarks, names or other distinctive signs of the Seller of which it becomes aware.

12. Final Provisions

12.1 The full or partial invalidity of an individual provision of these General Conditions of Sale shall not affect the validity of the remaining provisions. The Parties shall jointly refer to and rely upon the

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provisions of the applicable law presently in force for matters not expressly provided for under these General Conditions of Sale.

12.2. These General Conditions of Sale may be amended, supplemented or varied exclusively by the Seller and in writing.

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