



## **GENERAL CONDITIONS OF PURCHASE**

### **1. Definitions**

For the purposes herein, the following terms shall have the following meaning:

“**Buyer or OMFB**”: shall mean OMFB S.p.A.

“**Acknowledgment of Receipt**”: shall mean the acknowledgment of the Order, issued by the Supplier.

“**Contract**”: shall mean all the contractual documents regulating the relationship between the Supplier and OMFB and concerning the supply of the Products.

“**Supplier**”: shall mean the subject who supplies the Products to OMFB.

“**Offer**”: shall mean the Supplier’s offer of the Products.

“**Order**”: shall mean the order issued by the Buyer to purchase the Products.

“**Products**”: shall mean the products and/or accessories and/or services purchased by OMFB and provided by the Supplier, as specified in the Order.

“**Parties**”: shall mean, collectively, the Buyer and the Supplier.

“**Packing list**”: shall mean the list of Products to be delivered, indicating for each package the following data: dimension, weight, type of packaging, type of vehicle, total weight of the delivery.

### **2. Scope**

- a) These General Conditions of Purchase shall apply to all purchase of the Products made by the Buyer, unless expressly amended or modified by the relevant Order.
- b) The Supplier’s general condition of purchase are not binding for OMFB even if mentioned in the Supplier’s Acknowledge of Receipt, unless expressly accepted by the Buyer in writing.
- c) Each agreement between the Parties shall be considered binding only if in writing.
- d) By accepting the Order, the Supplier acknowledges and accepts the terms and conditions herein. In any case, the performance of the sale by the Supplier is to be considered as implicit acceptance of these General Conditions and of those indicated in the Order.

### **3. Orders**

- a) The terms and conditions indicated in the Order, notwithstanding what indicated in the Offer, shall be the only binding terms and conditions between the Parties. The Orders shall be sent by the Buyer to the Supplier by telefax and/or mail and/or email.
- b) The intended date of the Order is the date of delivery of the same to the Supplier as indicated in the Order.
- c) The Supplier is not entitled to utilise sub-supplier unless previously authorized by the Buyer in writing.

- d) The Supplier is not entitled to assign the Order, in whole or in part, unless previously authorized in writing by the Buyer.

### **4. Acknowledgment of Receipt – Amendments**

- a) Each Order shall be immediately confirmed by the Supplier, by issuing and immediately send, by telefax or email, the relevant Acknowledgment of Receipt or, alternatively, by sending, within two working days from the receipt of the Order, always by email or telefax, a copy of the Order signed for acceptance. The Buyer shall have the right to cancel such Order should the Acknowledge of Receipt not be received within 3 days from the date of the Order.
- b) Possible amendments to the Orders shall be requested by the Supplier to the Buyer in writing and their applicability is subject to the Buyer’s written acceptance thereof.
- c) Acceptance of the Order by the Supplier implies that this latter has verified the correctness and completeness of the relevant data.
- d) The Supplier undertakes to promptly request to the Buyer the missing data to perform the Order whether these are not indicated in the relevant Order.

### **5. Delivery terms- Inspections**

- a) The delivery term shall mean the day in which the Products shall be at the delivery place contractually agreed upon the Parties. The delivery terms shall become effective from the date of issuance of the Order. The Order shall indicate the Incoterms’ delivery term chosen, as from time to time applicable, regulating transport and delivery terms, as per article 17 a) hereinbelow.
- b) The delivery terms agreed upon between the Parties shall be strictly complied with. The Supplier shall make any possible effort to comply with the delivery terms agreed upon by the Parties.
- c) The Supplier shall promptly inform the Buyer, in writing, of any risk of potential delays, quantifying them and adequately indicating the relevant reasons.
- d) The Buyer shall have the right to accept these delays, giving the Supplier written notice thereof by telefax and/or mail and/or electronic means.
- e) Should the delay be the consequence of a force majeure event, the Supplier shall immediately give the Buyer written notice thereof both at its occurrence and at its ending. Should the delay due a force majeure event exceed 10 days, the Buyer shall have the right to terminate the Order by giving written notice to the Supplier 5 days in advance.
- f) In any case, the Supplier shall indemnify the Buyer for the damages suffered as a consequence of the delay,



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notwithstanding any possible acceptance of the delay by the Buyer itself.

- g) Whether, due to Supplier's delays in the delivery or collecting of the Products, it becomes necessary to make urgent transport and /or new transport, according to article 6.a) hereinafter, the Supplier shall bear all the relevant costs. Should the delivery place of the Products be at the Supplier's warehouse, the Buyer shall have the right to set off the additional costs anticipated for urgent transports with the price due to the Supplier.
- h) The Buyer shall authorize in writing any anticipation of the delivery terms.
- i) Should the Products be delivered with more than one week in advance with respect to the date indicated in the Order, and the Buyer hasn't requested it in writing, this latter shall have the right to send back the Products at the Supplier's costs. Should the Buyer decide not to send back the Products, it will have the right to charge to the Supplier the relevant costs of handling and storage, in an amount equal to 2% of the value of the delivered Products, for each week of anticipated delivery with respect to the agreed terms of delivery.
- j) In any case, the original contractual undertakings with reference to the agreed delivery terms (such as, for example, payment, warrants and so on) shall be fulfilled within the terms originally provided for by the Order.
- k) The Buyer is authorized, at any moment, also without a prior notice, to perform inspections at the Supplier's and/or at the sub-suppliers' warehouse which have been authorized as per article 3 of these General Condition of Purchase, in order to verify the qualitative standard of the supply and the advancement state of the Order.
- l) Whether, following such inspection, it emerges that the Supplier is not able to fulfill its obligations within the agreed terms, the Buyer shall have the right to do whatever necessary to respect the agreed terms, at the Supplier's cost.

### **6. Delivery conditions, transport and packaging**

- a) In case of delivery Ex Works at the Supplier's warehouse, this latter shall make the Products available for collection within the date indicated in the Order, sending to the Buyer's Purchasing Department the relevant written notice, by telefax, two days in advance. Such notice shall contain, among the others, the address where the Products shall be collected, the hours for the collection and the name of the person in charge for the Supplier, including the telephone number and the email address. Whether the Buyer incurs in unforeseen costs due to the excessive time to collect the Products at the Supplier's premises, such costs shall be borne by the Supplier.

- b) In case of delivery at the Buyer's premises or in a different place indicated in the Order, the risks and costs connected to the transport and/or acceptance of the Products shall be borne, in accordance with article 10 hereinbelow, by the Supplier until delivery of the Products as indicated in the Order.
- c) Should the delivery relate to different Orders, a single delivery note can be issued provided that it clearly mentions all the Orders to which it relates.
- d) The Supplier warrants that the packaging of the Products will be fit for the transport with open or covered vehicle, using high quality materials, which allow multiple loading and unloading operations with forklift, crane and/or overhead traveling crane. Should the inadequacy of the material render loading and/or unloading and/or handling operations difficult or dangerous, the Buyer shall ne entitled to reject the supply and to send back the Products, at the Suppliers' costs. In the latter case the Supplier shall dispatch new Products duly packaged.
- e) In case of Products delivered in a quantity greater than that indicated in the Order, the Buyer shall have 5 working days from the delivery date to send to the Supplier a non-conformity written declaration concerning the quantity, communicating as well its intention to:
  - i) accept the exceeding quantity of Products, at the same economic conditions indicated in the relevant Order. In this case, the Buyer shall have the right to charge the Supplier a lump sum as handling costs, equal to 2% of the delivered Products' value; or,
  - ii) reject the Products in excess and, should the Supplier not collect, at it expenses, such Products within 5 working days from the Buyer's relevant written notice, send such Products back to the Supplier at this latter's exclusive risk and expense.

### **7. Price and terms of payment**

- a) The prices are those indicates in the Order and are inclusive, in addition to the Products, of the packaging costs and of what indicated in the relevant Order.
- b) The Buyer shall reject invoices indicating prices different from those listed in the Order. Therefore, the Bayer shall not be deemed liable for any delay in the payment until it receives the invoices with the correct prices in the amount agreed. Changes in the prices must be authorized by the Buyer in writing.
- c) The payment shall be made as indicated in the Order. In any case the payment is strictly subject to the acceptance of the Products by the Buyer, as per article 10 hereinbelow.

### **8. Assignement of credit**



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The Supplier shall not assign, in whole or in part, its credit vis-à-vis the Buyer, unless expressly authorized by the Buyer in writing.

### **9. Delays in the delivery – Termination of contract**

The delivery terms provided for by article 6, or those agreed upon between the Parties, shall be strictly complied with and are to be intended as essential according to article 1457 of the Italian Civil Code. The Supplier shall take all necessary steps to respect the delivery terms contractually agreed.

### **10. Acceptance of the Products and Passage of title**

- a) Upon receipt of the Products at the Buyer's premises, this latter verifies the identity and quantity of the same in accordance with what is indicated in the relevant Order. This control shall be carried out by a subject appointed by the Buyer and his/her opinion shall be binding for the acceptance of the Products and the consequent passage of title. The Buyer shall have 30 days from receipt of the Products to notify to the Supplier, by written communication, vices and/or defects and/or non-conformity of the Products exception made for hidden vices and/or defects, in which case the deadline shall be calculated from their discovery.
- b) The acceptance of Products by the Buyer does not exonerate the Supplier from its liability as manufacturer.
- c) Each supply shall be consistent with what is indicated in the Order, included the specific rules for the supply and the documents mentioned in the Order.

### **11. Representation and Warranties on the Products**

- a) The Supplier warrants that the Products are manufactured according to the state of the art, free from any defect in material or workmanship and in accordance with the Order and the Contract. The Supplier, moreover, warrants that the Product are manufactured with the best quality materials in conformity to the specifications of the Order.
- b) The Products are warranted for a period of two years from the passage of title to the Buyer, unless differently set forth by the relevant Order for specific type of Products; in any case for a period of 12 months from the sale of the Products to OMFB's final clients.
- c) During the warranty period, the Supplier shall repair and/or, whether necessary, replace the Products as soon as possible from the Buyer's written notice.
- d) On the Products, or parts thereof, replaced and/or repaired, in accordance with the above paragraph, a new warranty period of two year shall apply, starting from the delivery at the place indicated by the Buyer.
- e) The Supplier is liable for the correctness and completeness of the certifications concerning the

Products, supplied to the Buyer, as per article 10 c) above. All the certificates, provided for by each Order and the laws, shall be sent by the Supplier to the Buyer in two copies by e-mail, or telefax at the attention of the Buyer's Purchasing Department, within the term contractually agreed upon and, in any case, never after the latest term of delivery of the Products. If such documents are not delivered to the Buyer within 15 days from delivery of the Products, the Buyer shall have the right to suspend the relevant payments. Should the relevant certificates be lost, the Supplier shall, following the Buyer's request, send another copy thereof.

- f) The costs relating to the issuance and delivery of the certificates mentioned in these General Condition shall be borne by the Supplier.

### **12. Insurance**

The Supplier undertakes to enter into a specific insurance policy to cover the risk arising from the liability which may derive from total or partial unfulfillment of its undertakings and from all connected risks, included the risk of defective products supply, in accordance with the provisions under article 1917 of the Italian Civil Code.

### **13. Warranty against third party's right**

- a) The Supplier warrants the Buyer against third party rights, in accordance with the provisions under article 1483 and followings of the Italian Civil Code.

### **14. Change in the Product**

- a) If the Buyer request to the Supplier changes in the Product, which imply change in the price and/or delivery terms, the relevant request shall be made in writing by the Buyer's legal representative.
- b) Should the Supplier request to modify the Product and this implies changes in the price and/or in the delivery terms, the same shall be previously authorized in writing by the Buyer's legal representative.
- c) If the changes mentioned in the previous paragraphs a) and b) are of technical nature, they should always be authorized in written by the Buyer's Purchasing Department.

### **15. Confidentiality – Intellectual Property**

The Supplier undertakes not to disclose and to consider as confidential, also following termination of the Contract, all technical information, formula, designs, processes and market data communicated or received by the Buyer, which remains the sole owner of the relevant industrial and intellectual property rights. The Supplier undertakes to extend this obligation to its sub-suppliers, should they became aware of the above information.



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### **16. Jurisdiction - Governing law**

Without regard to any conflict of law doctrine, the Contract shall be governed and construed according to Italian law. All disputes which may arise in connection with the execution, interpretation, performance and termination of the Contract shall be submitted to Italian exclusive jurisdiction and the Court of Brescia (Italy) shall be competent.

approve the following articles of these General Conditions of Purchase:

- 3 d) (Orders)**
- 7 c) (Price and terms of payment)**
- 8 (Assignment of credit)**
- 11 f) (Representation and warranties on the Products)**
- 16 (Jurisdiction – Governing law)**
- 17 c) (Miscellanea)**

[Place, date] \_\_\_\_\_

### **17. Miscellanea**

- a) The reference to Incoterms in the Order shall be intended as reference to the INCOTERMS as issued by the International Chamber of Commerce, valid at the date of issuance of the Order by the Buyer.
- b) Should one or more provisions of the Contract be or be declared null and void, the validity of the Contract itself shall not in any way be affected.
- c) The Buyer can terminate the Agreement, giving the Supplier written notice thereof, should this latter enter into liquidation or be declared bankrupt.
- d) The Supplier, which intends to economically or technically modify, in a significant way, its structure, shall previously notify, in writing, the Buyer thereof.

For specific acceptance  
The Supplier

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### **18. Data Protection**

The personal data of the Parties shall be processed in accordance with Italian Legislative Decree 196/2003 (“Code on the protection of personal data”), included in the respective data base and processed only for fiscal, tax and administrative scope and for the correct execution of the Contract.

### **19. OMFB’s Organization, Management and Control Model and Ethical Code**

The Supplier undertakes to fully comply with the behaviours and procedures of OMFB’s Organisation, Management and Control Model and Ethical Code, of which it declares to be fully aware. Should the Buyer be in breach of this provision, OMFB shall be entitled to immediately terminate the Contract, as provided for under article 1456 of the Italian Civil Code, according to this clause.

[Place, date] .....

The Supplier

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According to articles 1341 and 1342 of the Italian Civil Code, the Supplier declares to have read and to specifically