

GENERAL TERMS AND CONDITIONS OF SALE OF METAKERN B.V. (34362603)

1. Definitions

For the purpose of these general terms and conditions of sale “Agreement” shall mean the agreement entered into between Seller and Buyer for the sale and delivery of Goods and/or services by Seller to Buyer as set out in Section 3, and to include these Conditions and all other documents and/or standards therein referred to; “Buyer” shall mean each person or legal entity which enters into the Agreement with Seller for the sale by Seller and purchase by Buyer of the Goods; “Conditions” shall mean these general terms and conditions of sale of Seller; “Metakern” shall mean Metakern B.V. References to Goods shall, where appropriate be deemed to include any agreed services to be rendered by Seller to Buyer under the Agreement; “In writing” shall mean by (registered) mail, by fax and/or by e-mail. “Order” shall mean any purchase order for the Goods by Buyer placed with Seller; “Parties” shall mean Seller and Buyer “Seller” shall mean Metakern B.V., a limited liability company having its statutory seat in Amsterdam, with its registered address at Hoogoorddreef 9 in Amsterdam, including its successors in title, assigns and/or transferees as the case may be; “Seller’s Confirmation” shall mean Seller’s written confirmation of the Order.

2. Applicability

2.1

These Conditions govern the offering, sale and delivery of all Goods from Seller to Buyer and apply to all similar dealings between Seller and Buyer and these Conditions form an integral part of all quotations and offers made by Seller, all acceptances, acknowledgements and confirmations by Seller and any Agreements between Seller and Buyer for the sale by Seller and the purchase by Buyer of the Goods.

2.2

These Conditions supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Goods and shall apply in preference to and supersede any and all terms and conditions submitted by Buyer. Buyer’s terms and conditions are hereby expressly rejected and shall not be binding in any way on Seller. Failure of Seller to object to terms and conditions set by Buyer shall in no event be construed as an acceptance of any terms and conditions of Buyer. Neither Seller’s commencement of performance nor Seller’s delivery shall be deemed or constituted as acceptance of any of Buyer’s terms and conditions. Any communication or conduct of Buyer which confirms an agreement for the delivery of Goods by Seller, as well as acceptance by Buyer of any delivery of the Goods from Seller shall constitute an unqualified acceptance by Buyer of these Conditions.

2.3

By contracting on the basis of these Conditions, Buyer also agrees to the applicability thereof for all future dealings and Agreements between Seller and Buyer for the sale and delivery of the Goods, even if this is not expressly stated. Seller shall be entitled to update and/or amend these Conditions regularly and by and as of the moment of notifying Buyer of such update or amendment or by sending Buyer the updated or amended Conditions, these revised Conditions shall apply to all dealings between Seller and Buyer.

2.4

In case of conflict between these Conditions and the terms of the Agreement, the Agreement shall prevail.

3. Quotations, Orders and Agreement

3.1

Quotations, made by Seller in whatever form shall be without engagement and are not binding upon Seller. All quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller in writing ("Seller's Confirmation") and upon Seller's Confirmation the Agreement between Seller and Buyer shall be formed.

3.2

Oral statements and agreements made by Seller's employees, representatives and/ or agents are not binding upon Seller unless and to the extent that such oral statements are confirmed in writing by duly authorized representative(s) of Seller.

3.3

Buyer shall be responsible for the accuracy and functional suitability of all data, drawings, calculations, designs and all other documentation provided to Seller in connection with Buyer's request for an offer and/or (price) quotation by Seller.

3.4

Any samples supplied to Buyer are supplied solely for information purposes and in no way imply any express or implied warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.

3.5

No amendment, addition, complement and/or any other variation whatsoever to the Agreement and/or these Conditions shall apply unless expressly accepted in writing by Seller.

4. Prices

4.1

Unless explicitly agreed otherwise, Seller's prices do not include value added tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Goods or the delivery thereof. The amount of any taxes, duties and similar levies or charges levied in connection with the sale of the Goods shall be for Buyer's account and Seller will add such taxes, duties, levies or charges to each invoice or will invoice Buyer separately in connection therewith.

4.2

In case of an increase in cost-determining factors, including but not limited to raw and auxiliary materials, energy, products obtained by Seller from third parties, governmental charges, freight costs and insurance premiums, Seller shall be entitled to increase the price of the ordered Goods accordingly. Seller shall notify Buyer of such increase and Buyer shall pay such price increase at the same time as the respective principal amount or the next instalment is paid.

5. Payment

5.1

Unless explicitly agreed otherwise, net payment, free of any set-off or deduction, shall be received by the Seller within three (3) working days of the date of Seller's invoice for the Goods by means of transfer into the bank account mentioned on such invoice. All bank charges relating to the transfer of money to Seller shall be for Buyer's account.

5.2

Buyer shall have no right to withhold or reduce any payments to be made to Seller or to set off existing and/or future claims against any payments due to Seller for Goods sold under the Agreement or under any other agreement that Buyer may have with Seller.

5.3

Payment shall be considered effected as soon as Seller can dispose of the amount credited to Seller's account.

5.4

With respect to payment of the price for the Goods, time is of the essence. In the event Buyer fails to pay any amount when due, without prejudice to any other rights of Seller, Seller shall be entitled to charge interest on any overdue payment at the rate of 12 % per annum or the applicable statutory rate, whichever is higher, but not to exceed the maximum interest rate permitted under the law, from the due date computed on a daily basis until all amounts outstanding are paid in full.

5.5

Notwithstanding Section 5.4, in the event of any default by Buyer in the payment of any invoice, fees or charges due or any other default by Buyer, Seller shall, without prejudice to Seller's other rights, have the right to refuse performance and/or delivery of any Goods and Seller may suspend, delay or cancel any credit, delivery or any other performance by Seller until all amounts outstanding are paid in full.

5.6

All costs, including judicial and extra-judicial costs, and expenses incurred by Seller with respect to collection of overdue payments (including but not limited to reasonable attorney's fees, expert fees, courts and other expenses of litigation) shall be for Buyer's account. Seller reserves the right to apply payment to the longest outstanding invoice items plus related interest for default, and costs, including but not limited to judicial and extra-judicial costs and expenses as set out above, if any, and to do so in the following sequence: costs, interest, and principal amount regardless of any contrary advice from Buyer.

5.7

Buyer shall promptly inform Seller by written notice to be sent to Seller by registered mail or by fax if at any time there occurs a change in Buyer's or Buyer's bank's financial condition, business, prospects or other circumstances that have or may have a material adverse affect on Buyer's performance and/or fulfillment of its obligations under this Agreement, and in such notice Buyer shall provide Seller with all information with respect

to such circumstances and how this may or will affect Buyer's performance of its obligations under the Agreement.

6. Delivery

6.1

The Goods shall be delivered on the delivery terms as stated in the Agreement and such terms shall be interpreted in accordance with the latest version of the INCOTERMS, issued by the International Chamber of Commerce, Paris, France as at the date of the Agreement.

6.2

Any times or dates for delivery are approximate only and are based on the circumstances as they're valid at the time of the closing of the Agreement, such times and dates are given for information only and shall under no circumstances be of the essence. Seller shall use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by Seller provided Buyer shall provide all necessary Order and delivery information sufficiently prior to such delivery date. Seller shall be entitled to deliver the Goods in parts and to invoice each part separately.

6.3

The risk of loss or damage to the Goods shall pass from the Seller to the Buyer in accordance with the agreed Incoterm as stated in the Agreement. Goods for which delivery is suspended pending payment by Buyer as well as Goods of which delivery is wrongfully rejected or not accepted by Buyer shall be held and stored by Seller at the risk and expense of Buyer.

6.4

Delay in delivery of any Goods shall not constitute a breach of contract and Buyer shall not be entitled to terminate the Agreement and/or to claim for compensation whatsoever. A delay in delivery shall not relieve Buyer of its obligation to accept delivery thereof. As set out in Section 11 Seller shall in no event be liable for any kind of indirect or consequential damages caused by any delay in delivery. Seller will notify Buyer of the delay and Buyer shall allow Seller thirty (30) days from the date of receipt of such notice, within which to cure. Without prejudice to the above, in the event of a delay in delivery due to Force Majeure Section 16 shall apply.

6.5

All deliveries of Goods by Seller shall at all times be subject to credit approval of Seller. If, in Seller's reasonable judgement, Buyer's financial condition at any time does not justify production or delivery of the Goods on the agreed payment terms, Seller may require full or partial payment in advance, request the provision of securities or request any other payment conditions, as a condition to delivery and Seller may at its option also decide to suspend fulfilment of (part of) the Agreement in the meantime, or terminate the Agreement by written notice as set out in Section 17, without prejudice to Seller's right to compensation for damages in connection thereto and any other right under the Agreement or at law and without Buyer being entitled to claim any compensation.

7. Collection of Goods

Unless explicitly agreed otherwise, Buyer shall collect the Goods within five (5) days from the date of receipt of Seller's notification that the Goods are ready for collection. If Buyer fails to comply with this obligation, Seller may at its option store such Goods at the Buyer's risk and maintain storage of such Goods at the Buyer's expense and require Buyer to first pay such Goods before shipping them to Buyer, without prejudice to Seller's right to terminate the Agreement as set out in Section 17.

8. Quality and Quantity

Unless explicitly agreed otherwise, weights and assays of the ordered Goods established by or on behalf of Seller shall be binding.

9. Inspection and Complaints

9.1

On delivery Buyer shall inspect the Goods exercising such care as is customary or appropriate in the circumstances.

9.2

Complaints about the Goods shall be made in writing, accurately describing the nature and the extent of the defect and/or non-compliance and must reach Seller not later than two (2) days from the date of delivery in respect of any (visible) defect or non-compliance which would be apparent upon careful inspection and/or reasonable testing on delivery. In case this obligation is not fulfilled by Buyer, it is assumed that the Goods have been accepted by Buyer and are compliant with the requirements of the Agreement. In case of complaints about any other defect or non-compliance the Buyer shall be deemed to have accepted the Goods if Buyer does not provide Seller with a written complaint, immediately upon discovery and in any event not more than fifteen (15) days from the date of delivery of the Goods. Full particulars of such claim, including an accurate description of the nature and the extent of the defect and/or non-compliance shall be given in writing to Seller fifteen (15) days after the abovementioned notification. In case the quality or amount of the delivered Goods is the subject of the complaint Buyer shall in addition also submit to Seller a sworn surveyor's report. Filing of a complaint shall not affect Buyer's obligation to pay as defined in Section 5.

9.3

Use, processing and/or (re)sale of the Goods by Buyer shall be deemed an unconditional acceptance of the Goods by Buyer and a waiver of all claims in respect of the Goods.

9.4

Defects in parts of the Goods do not entitle Buyer to reject the entire delivery of the Goods.

9.5

In case of complaints the Buyer has to allow upon Seller's first request, Seller or a third party appointed on Seller's behalf to inspect, assay and/or to take samples of the respective Goods. Such inspection, assaying and/or sampling will be carried out by an independent and internationally recognized surveyor or laboratory.

9.6

Goods that are the subject of a complaint shall be warehoused in the appropriate manner and shall be kept separately in order to enable the inspection, assaying and/ or sampling

as set out in Section 9.5. If the Buyer does not fulfill such obligation(s) in time or in the requested manner, the Seller may reject such claim and the Goods are deemed to have been accepted free of defects.

9.7

Seller shall be entitled to refuse to accept any Goods that are returned without Seller's prior written consent, even if such Goods are returned undamaged and together with the legally required documentation. Goods that Seller consents or directs in writing to be returned shall be returned to Seller at the risk of Buyer, to the destination directed by Seller. Goods returned by Buyer and accepted by Seller as defective shall at Seller's option be replaced or repaired without charge. In case of Goods returned to Seller which are not found to be defective or non-conforming Buyer shall pay for the freight, testing, handling costs and any other costs and/or damages associated therewith.

9.8

Notwithstanding the foregoing, Seller shall have no obligations whatsoever if the alleged defect or non compliance is found to have occurred as a result of misuse, neglect, improper installation, accident, as result of improper repair, lack of proper maintenance, alteration, modification, defective or careless storage, transportation or improper handling.

10.Retention of title

10.1

Title to the Goods shall not pass to Buyer and full legal ownership of the Goods shall remain with Seller unless and until Buyer has fulfilled all its obligations arising from or in connection with the Agreement and all other previous Agreements between Buyer and Seller for the sale of Goods to Buyer, including but not limited to receipt by Seller of all payments due in connection with all such Agreements, including payment of all applicable costs such as interest, expenses, charges, costs related to loss of value of the Goods and other costs relating to Buyer's failure to meet its obligations. Up and until such moment, the Goods are subject to retention of title.

10.2

If Buyer fails to perform any of its obligations arising out of or in connection with the Agreements between Buyer and Seller as set out in Section 10.1 or if Seller has justified reasons to assume that Buyer may not be able to fulfill such obligations, Seller shall be entitled without prior written notification of default, to invoke a retention of title and to require immediate re-delivery of the Goods. The costs in connection with such re-delivery shall be at the expense of Buyer.

10.3

As long as title to and ownership of the Goods remains with Seller pursuant to this Section 10, Buyer is entitled to deliver or process the Goods solely to the extend required in its ordinary course of business, and to the extend possible shall (i) keep the Goods separate and in a clearly identifiable manner, (ii) notify Seller immediately of any claims by third parties which may affect the Goods, (iii) shall not lease, pledge and/or encumber in anyway whatsoever the Goods for the benefit of a third party and (iv) adequately insure the Goods.

10.4

If Seller in such case (re-) sells the Goods without a reservation with respect to the retention of title, Buyer hereby in anticipation agrees to establish to the benefit of Seller, an

undisclosed pledge upon the receivables which are to accrue to the Buyer from the resale to his customers or other third parties, for the total amount due to Seller (including VAT). In case the Buyer fails to meet its payment obligations towards the Seller, upon Seller's first request Buyer shall fully cooperate with the Seller with respect to the execution of Seller's right in connection with such pledge.

10.5

Notwithstanding the above the Seller shall at all times be entitled by way of notification of the Buyer to waive its retained interest in the Goods from the moment that the Goods are identified as destined for the Buyer, or at any moment thereafter. Moreover the Buyer is obliged to take out such insurance as is commercially available to cover the liability of the owner of the Goods or any party interested therein.

11. Limitation of liability

11.1

No warranty is given and no representation is made by Seller, whether express or implied, as to the usefulness, sufficiency, merchantability or fitness for any purpose whatsoever of the Goods delivered, unless explicitly agreed otherwise.

11.2

Under no circumstances shall Seller be liable to Buyer or third parties for any kind of special, incidental, indirect, consequential or punitive damage or loss, environmental damage, cost or expense, including without limitation damage based upon loss of sales or profits, loss of reputation, loss of goodwill, work stoppage, production failure, whether arising out of or in connection with the Agreement, the sale of any Goods by Seller or the use of the Goods and whether or not such damages are based on breach of warranty, any other breach of contract, tort (including negligence) or otherwise. The liability of Seller for any and all claims shall under no circumstances exceed the invoice value for the Goods that are the subject of the claim.

11.3

Buyer shall indemnify and hold Seller harmless from and against any claims by third parties with respect to any damage, losses, costs including attorney's fees, expenses, and liabilities suffered by such third parties arising out of or in connection with the Goods and/or use of the Goods.

11.4

Seller shall exercise due diligence when engaging goods and/or services of third parties. Seller shall not be liable however for any defaults or non-compliance on the part of such third parties.

11.5

Buyer's claim for damages must be brought by Buyer within thirty (30) days of the date of the event giving rise to any such claim, and any lawsuit relating to any such claim must be filed within one (1) year of the date of such event. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

11.6

Buyer shall take out and maintain in force all insurance policies necessary to cover its liability arising out or in connection with the Agreement. At the first request of Seller Buyer

will provide the insurance certificates evidencing Buyer's coverage and shall keep Seller informed of any changes.

12. Set off

Seller shall at all times have the right to deduct and/or set off any amounts owing from Seller to Buyer, irrespective of the nature of such claim against any amount owing from Buyer to Seller.

13. Confidentiality

13.1

Buyer shall keep confidential the existence and content of the Agreement and all technical, commercial and financial data and all other information of a confidential nature provided by or on behalf of Seller to Buyer in connection with the (preparation of) the Agreement. All such information may be used by Buyer only for the purpose of the Agreement. And upon Seller's request Buyer shall promptly return all such information to Seller and Buyer shall not retain a copy hereof.

13.2

Buyer may only disclose such confidential information to third parties provided Seller has given its prior written consent and provided Buyer shall ensure that such third parties shall undertake in writing to be bound by the same confidentiality undertaking.

14. Use of information

Buyer must utilize and solely rely on its own expertise, know-how and judgment in relation to the Goods and Buyer's use thereof and Buyer's application of any information obtained from the part of Seller for the purposes intended by Buyer. Details and information provided with regard to the suitability and use of the Goods shall not be binding and Seller does not assume any liability in connection thereto.

15. Compliance with laws and standards

Buyer acknowledges that the handling, use, processing, transportation, storage, disposal and sale of the Goods may be subject to requirements or limitations under any law, regulation, code or standard. Buyer should, for its own safeguard, consult the producers Material Safety Data Sheet, relevant codes of practice with regard to adequate hygiene, safety and environmental standards and enforcement thereof, with respect to handling, processing and storage and disposal of the Goods. Buyer shall be exclusively responsible for ensuring compliance with all laws, regulations, codes and standards, including without limitation all health, safety and environmental laws and regulations, with respect to Buyer's intended handling, use, processing, transportation, storage, disposal and sale of the Goods and Buyer shall assume all liability resulting there from.

16. Force Majeure

16.1

Force Majeure shall mean any circumstances or occurrences beyond Seller's control, whether or not foreseeable at the time of the Agreement including without limitation acts of God, legislative measures, acts, orders or regulations of governments or other administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, wars, riot, sabotage, accident, epidemic, strike, lock out, slow down, labour disturbances,

industrial dispute, delay on the part of any subcontractor or supplier, difficulty in obtaining necessary labour or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance.

16.2

If Seller shall be prevented or hindered, directly or indirectly by an event of Force Majeure from performing all or any of its obligations under the Agreement, the performance of such obligations by Seller will be suspended for the period such event of Force Majeure continues, without Seller being responsible or liable to Buyer for any damage resulting there from.

16.3

If, a Force Majeure event extends (or is expected to extend for a period of) 90 consecutive days or more after the agreed delivery date both parties are entitled to terminate by written notice all or any part of the Agreement without any liability on the part of Seller towards Buyer.

17. Breach and Termination

17.1

Without prejudice to Seller's other rights and remedies under the Agreement or at law, the Seller shall be entitled, without any intervention of the courts being required and without prior written notification of default, at Seller's option to either terminate the Agreement or any part thereof or to suspend any performance by Seller under the Agreement, by written notice to Buyer, in any case without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination, if

(a) Buyer is in default of performance of any of its obligations under the Agreement; or
(b) Seller has reasonable doubts with respect to Buyer's performance of its obligations to Seller and Buyer fails to provide to Seller the adequate assurance of Buyer's performance; if Buyer suspends payments of its debts in whole or in part, or Buyer enters into any composition or arrangement with its creditors or any assignment for the benefit of its creditors, or any proceedings in insolvency, bankruptcy, liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, or if a trustee or receiver or administrator is appointed for all or substantial parts of the assets of Buyer

17.2

In any such event of (a) and/or (b) set out in Section 17.1 the Buyer shall be liable towards the Seller and herewith undertakes to indemnify the Seller for any and all damages, costs and/or expenses suffered or otherwise incurred on the Seller in connection with Buyer's failure to perform under the Agreement.

17.3

In any such event of (a) and/or (b) set out in Section 17.1 all outstanding claims of Seller shall be come due and payable instantly and for the full amount and Seller shall be entitled to demand re-delivery and take repossession of any delivered Goods for which purpose Buyer shall allow Seller or its nominated representative to enter upon all or any of the premises where the Goods are or may be located. Buyer shall undertake all necessary measures in connection thereto.

18. Intellectual property rights

18.1

Unless agreed otherwise in writing, Seller retains the copyrights and all intellectual property rights to any illustrations, drawings, calculations and all other data submitted to Buyer and all such documents shall remain the property of Seller and shall be returned upon Seller's request without retaining any copies thereof.

18.2

The sale of the Goods shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Goods, and Buyer expressly assumes all risks of any intellectual property infringement by reason of its importation and/or use of the Goods, whether singly or in combination with other materials or in any processing operation.

19. Export Certificate

The Buyer must submit to Seller if applicable the export certificate, as required by tax law, if a Buyer, who is based outside of the Netherlands, or his authorized agent picks up Goods and transports or ships these to the foreign territory. In any and all cases, the Buyer will be fully responsible and liable towards Seller for all VAT or any other (export) duty imposed by the proper authorities or additional charges for which Seller might be held responsible with regards to the delivery to the Buyer.

20. Assignment and subcontracting

Neither party may assign or subcontract the Agreement or any rights or obligations pursuant thereto, without the other party's prior written consent, which consent will not be unreasonably withheld and no assignment shall be effective until the assignee agrees in writing with the other party to be bound by and to perform the obligations of the agreements assigned to it. The Seller may however at any time without Buyer's prior written consent assign or subcontract such rights and obligations, wholly or partly, to Metakern BV or to a third party acquiring all or a substantial part of Seller's assets or business relating to the Goods.

21. Waiver

Failure by Seller to enforce at any time any provision of the Agreement including these Conditions shall not be construed as a waiver of Seller's right to act or enforce any such term or condition and Seller's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Seller of any breach of Buyer's obligations shall constitute a waiver of any prior or subsequent breach.

22. Severability

In the event that any provision(s) of the Agreement including these Conditions are or become invalid either in whole or in part or unenforceable, this shall have no effect on the validity or enforceability of the remaining provisions. And the invalid provision shall be replaced by a provision which shall as far as possible satisfy the legal and commercial intention of the invalid provision to the extent permissible under the law.

23.Survival of rights

Termination of one or more of the rights and obligations of the parties shall not affect the provisions of the Agreement including these Conditions, which are intended to continue to have effect after such termination.

24.Governing Law and Submission to Jurisdiction

24.1

The parties' rights and obligations arising out of or in connection with any Agreement shall be governed, construed, interpreted and enforced exclusively in accordance with the law of the Netherlands. The applicability of UN Convention on Contracts for the International Sale of Goods, concluded in Vienna on April 11, 1980 is explicitly excluded.

24.2

Parties hereby agree that all disputes which cannot be resolved amicably shall be, at the option of Seller, (i) submitted to the exclusive jurisdiction of the competent courts in Rotterdam, the Netherlands provided that Seller shall always be permitted to bring any proceedings, suit or actions against Buyer in any other court of competent jurisdiction, and the Buyer on entering into the Agreement irrevocably submits to the jurisdiction of those courts and waives any objection which Buyer may have to the venue of those proceedings, suit or actions; or

(ii) finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral procedure shall be conducted in the English language in Rotterdam, the Netherlands.