

## 1 Field of application

These General Terms and Conditions of Sale (“**General Terms and Conditions of Sale**” or “**GTC**”) shall apply to all sales of biorefinery and co-products (“**Goods**”) by Lenzing Aktiengesellschaft with its registered office in Lenzing, Austria (“**Seller**”) to any buyer of the Goods (“**Buyer**”). These GTC are an exclusive part of Seller’s order confirmation (“Order Confirmation”) and govern the sale and delivery of the Goods. In the event of a continuous business relationship, these GTC shall also apply to future transactions in which no express reference is made to them. Unless otherwise agreed in writing, Seller expressly rejects the applicability of any additional or deviating terms and conditions of the Buyer. These shall not become part of the contract, irrespective of previous business transactions between the Seller and the Buyer, even if the Seller does not expressly object to them in individual cases. Deviations from individual points of these GTC confirmed in writing shall only apply to the agreed transaction and shall be interpreted restrictively; all other points of these GTC shall remain applicable without restriction.

## 2 Formation of contracts and process in ordering and allocation of budgeted quantities

**2.1** All offers of the Seller are subject to confirmation, unless their binding nature is expressly confirmed by the Seller in writing. A legal transaction shall be effected at the earliest upon the issuance of the Order Confirmation of Seller or the Delivery of the Goods (as defined herein), whichever occurs earlier (“**Contract**”). “Delivery” means when the Seller has delivered the Goods in accordance with Clause 6 of these GTC.

If the Order Confirmation deviates from Buyer’s offer, the Contract shall be formed according to the Order Confirmation. If an acknowledgment of an Order Confirmation or any other correspondence of Buyer contains supplements to or deviations from the Order Confirmation, they shall not be deemed agreed upon and shall not be incorporated into the Contract.

In addition to the Order Confirmation and these General Terms and Conditions, the Contract shall include any additional terms and conditions specified by Seller in documents referred to or accompanying the Order Confirmation.

**2.2** If Buyer notifies a quantity required for a certain time frame and Seller gives a capacity commitment for this, the orders shall be placed evenly over the defined time frame (in the case of annual quantities quartered over time windows of quarters, in the case of quarterly quantities tripled over time windows of months (“**Time Window**”). Unless otherwise notified by Seller in writing, Seller’s corresponding capacity

commitment shall lapse for quantities not ordered in a Time Window.

## 3 Prices and taxes

Unless otherwise specified on the Order Confirmation, all prices confirmed by Seller are in Euro and are FCA Lenzing, Austria (Incoterms® 2020) and do not include any applicable sale, use or other taxes, or other governmental charges imposed upon the production, shipment, sale or use of the Goods covered hereby (“Additional Charges”), all of which shall be paid by the Buyer to (i) the Seller upon issuance of an invoice by the Seller to the Buyer for any such Additional Charges, or (ii) to the relevant taxing authority, as required by the relevant taxing authority.

## 4 Payment terms

**4.1** No payment shall be deemed to have been received until the Seller has received cleared funds in its bank account. Payment is due by the date and in accordance with the payment terms and instructions stated on the Order Confirmation or Seller invoice (whichever date is the earlier). However, Seller may, in the circumstances described in Clause 11.3 or otherwise at its discretion, require prepayment of the price of the Goods and/or some other form of security for payment prior to shipment. If neither the Order Confirmation nor Seller invoice nor any other arrangement between Seller and Buyer specifies a date by which payment must be made, payment in full will be due within 10 days of the date of receipt by Buyer of Seller’s invoice for the relevant Goods. In case of partial deliveries, the Seller is entitled to submit partial invoices. Seller shall be entitled to demand payment in full for the Goods without any withholding including for VAT or other forms of taxes, notwithstanding that ownership in any of those Goods has not passed from Seller to Buyer. Where a discount is granted in the Order Confirmation, such discount will only be allowed upon payment being made by the due date (or earlier date stated on the Order Confirmation for the purpose of obtaining the discount). Such discount may be rescinded or canceled by Seller if payment is not made by the due date, in which case the full undiscounted amount shall be due by the Buyer. If Seller accepts bills of exchange or checks, this shall be on account of payment only.

**4.2** Payments received will be credited against the oldest outstanding invoice plus any interest accrued thereon by reason of late payment. Seller may offset sums received from Buyer against any debt due to Seller from Buyer, irrespective of any purported appropriation or apportionment by Buyer. Buyer may not withhold payment of any invoice or other amount

due to Seller by reason of any right of set-off, counterclaim, discount, deduction, withholding, abatement or otherwise which Buyer may have or allege to have or for any reason whatever.

- 4.3** If Seller does not receive payments in due time in accordance with Clause 4.1, Buyer shall pay Seller interest on the outstanding balance from the due date at the rate of 12% per annum or the maximum rate permitted by law (if lower). The Buyer shall compensate the Seller for any currency losses suffered by the Seller as a result of the Buyer's failure to pay on the due date for payment or where Buyer does not pay in the currency as quoted in the Order Confirmation.
- 4.4** Incidental expenses associated with payment, such as fees for shipping documents, collection or discount charges for checks or bills of exchange, bank and transfer charges, dunning or collection costs, etc., shall be borne by the Buyer and shall be due for payment immediately.
- 4.5** Should special obligations of the Seller or instructions to the Seller result from credit insurance or other insurance, in particular in the case of default in payment, the Seller shall be entitled to impose corresponding obligations on the Buyer or to give instructions to the Buyer.

## **5 Collection**

In the event that Seller retains a collection agency or other third party to collect any amount owed by Buyer, or institutes legal proceedings to collect such amount or to enforce any right related to the sale or purchase of the Goods, including enforcement of any security interest granted by Buyer, Buyer shall reimburse Seller for all collection agency and other third party fees and costs and all costs incurred by Seller in such legal proceedings, including, but not limited to, attorneys' fees.

## **6 Delivery, risk of loss, packaging and retained security interest**

- 6.1** Delivery dates quoted by Seller in a quote or on the Order Confirmation are the dates the Goods are scheduled by the Seller to be ready for shipment, and are given or accepted by Seller in good faith but are not guaranteed. In the event of delivery bottlenecks, the Seller is entitled to postpone deadlines. Partial deliveries are permissible unless otherwise stated in the Seller's Order Confirmation. Notwithstanding that the Seller may have failed to deliver the Goods (or any portion thereof) promptly, the Buyer shall be bound to accept and to pay for the Goods in full.

If the type designation or other information relevant for the delivery is missing on the Buyer's order, the

Buyer is obliged to notify the Seller of the relevant information without delay. In case of delay in notification, the Seller shall have the right to postpone the delivery date according to its own discretion.

- 6.2** The Buyer shall be responsible for all storage, insurance and other costs relating to Buyer's failure to accept Delivery and all such charges incurred by the Seller shall be paid by Buyer within 30 days of submission of an invoice. In addition, if Buyer fails to take Delivery of the Goods or fails to give the Seller adequate delivery instructions, documents, licenses or authorizations to enable the Seller to deliver at the time stated for Delivery then all risks in the Goods will pass to Buyer, the Goods will be deemed to have been delivered and without prejudice to any other right or remedy available to Seller, Seller may sell the Goods at the best price readily obtainable and, if the Buyer has already paid the purchase price, pay the Buyer the purchase price paid (after deducting all the said storage, insurance, selling expenses, and other costs relating to Buyer's failure to comply with the Contract). If the proceeds obtained from the replacement sale are lower than the purchase price agreed with the Buyer, the Seller shall be entitled to charge the Buyer for this difference (plus the costs of storage, insurance and other costs due to a delay in acceptance by the Buyer).

- 6.3** Unless otherwise specified on the Order Confirmation, the Delivery of all Goods shall be FCA Sellers' facility in Lenzing, Austria (Incoterms® 2020), and risk of loss or damage to the Goods will pass to Buyer on Seller's Delivery of Goods for pickup by the carrier. Following Delivery, any claims for losses or damage shall be made directly by Buyer against the carrier. If the Order Confirmation specifies a term other than FCA (for example, CPT or CIP), Delivery shall be in accordance with such Incoterm 2020, including the allocation of risk of loss or damage, and costs.

Seller may reject transports, containers or storage presented for loading/unloading/transfer or handling which, in Seller's sole discretion, would present an unsafe or potentially an unsafe situation.

For all Deliveries, Buyer is solely responsible for offloading or unloading all Goods.

To the extent Buyer fails to offload or unload the entire quantity of Goods from the transport or container utilized for shipment (i) any residual or remaining Goods shall be deemed to have been abandoned by Buyer for the beneficial use or re-use by Seller, and will become the property of Seller when received and accepted by Seller at the place of origin; (ii) Buyer will not receive credit, payment or other consideration for any such residual or

remaining Goods; and (iii) Buyer is solely responsible for the transportation of such residual or remaining Goods (including freight charges, shipping documents, and compliance with all laws related thereto) until received and accepted by Seller at the place of origin .

If the Seller or its carrier is unable for any reason to place the Goods on board ship or other form of transport upon their arrival at the port/place of shipment, a warehouse receipt for the Goods shall be treated as receipt of Buyer.

**6.4** The Buyer shall accept Goods delivered by Seller in weights or quantities varying by not more than 10% from the Contract weight or quantity, and shall pay, pro-rata for the actual weight or quantity delivered. The weight or quantity stated on Seller's packing list shall be conclusive evidence of the amount delivered to and received by Buyer except in cases of manifest error.

**6.5** The Goods shall be provided or delivered in the manner or packaging customary with the Seller. Damaged or unreturned Euro pallets may be invoiced by the Seller. Special packaging requirements will be subject to a non-refundable additional charge. Buyer shall comply with all applicable laws and regulations, as well as return, disposal and other requirements relating to packaging as specified in the Seller's Order Confirmation.

## 7 Seller's warranty

**7.1** The Seller warrants that, upon Delivery, the Goods:

- a. are sold with good title; and
- b. will, subject to Clause 7.4 and 7.5 below, (i) comply in all material respects with the Seller's current published product data sheets or (ii) where there are no product data sheets, that they comply in all material respects (subject to the tolerances referred to in Clause 6.2 above) with any specification appearing on the Order Confirmation (the "**Seller's Warranty**") and (iii) are made with sound materials and workmanship to normal standards for these Goods.

The Seller's Warranty is given on the condition that any instructions (oral or written) of Seller relating to the Goods (including, but without limitation, their storage or use) and good trade practice are strictly complied with.

Customary deviations in the appearance and properties of the contractual goods, which are due to unavoidable variations in the quality of the raw materials and/or the manufacturing process, shall be

deemed to be in accordance with the Contract and shall not give rise to any rights or claims whatsoever on the part of the Buyer.

**7.2** Buyer shall examine the Goods immediately upon receipt. Buyer shall immediately notify the Seller, and in any event within 3 days of receipt of Goods, of any incomplete or failed Delivery, loss or damage during shipment. If the Goods otherwise fail to comply with the Seller's Warranty, Buyer must notify the Seller within 15 days after the date when Buyer became or ought reasonably to have become aware of any of the above, and in any event before the earlier of:

- a. 3 months from the date of Delivery; and
- b. 30 days after the Goods have been used or put into process.

Buyer shall be treated as having waived all claims connected with the matter which should have been notified and deemed to have accepted the Goods and Seller shall have no liability whatsoever to Buyer in respect of those Goods if Buyer does not so notify Seller or makes any further use of such Goods after giving such notice.

**7.3** In the event of a claim for a defect, Seller shall be given the opportunity to inspect the goods in question itself or have them inspected by a third party. In doing so, Buyer shall ensure that the Seller incurs the lowest possible costs as a result of this provision. Subject to Clause 7.2, if it is shown to the Seller's reasonable satisfaction that the Goods fail materially to comply with the Seller's Warranty or there was an incomplete or failed Delivery, or loss or damage during shipment, Seller shall be given a reasonable opportunity to correct such failure. If Seller does not or is unable to do so, Seller will, at the Seller's option, either refund the price of the Goods at the pro rata Contract rate (or, if the Goods have depreciated for reasons other than the Seller's default or have been used or put into process, a reasonable part of the net Contract price), or replace the Goods (or the defective part of the Goods) (if reasonably practicable) within a reasonable time, free of charge. Such correction, refund or replacement shall be Seller's sole liability in relation to any such failure. Replacement of the Goods are covered by these General Terms and Conditions, including the Seller's Warranty. Goods which are alleged not to comply with the Seller's Warranty shall as far as possible be preserved for inspection by Seller, and if replaced or if a refund is made shall be returned to the Seller (at the Seller's cost) if the Seller reasonably so requests. Buyer's sole and exclusive remedy for non-

conforming Goods is the refund or replacement specified in this Clause 7.3.

Buyer shall keep the damage as small as possible in case of a complaint.

**7.4** Clause 7.1 and the Seller's Warranty does not apply to Goods sold with the express indication that they do not meet the specifications agreed as a rule ("**Out of Spec Goods**" or "**OOS Goods**"). For the avoidance of doubt, Clauses 7.2 and 7.3 do not apply to the Out of Spec Goods, except with respect to an incomplete or failed Delivery, or loss or damage during shipment.

**7.5** Seller reserves the right to amend the specification of the Goods, which amendment shall be applicable to all Goods not yet subject to an Order Confirmation, in particular if required by any applicable statutory, regulatory or governmental requirements. In such a case, the Seller shall promptly inform the Buyer about the amended specification.

## **8 DISCLAIMER OF WARRANTIES**

**8.1** TO THE FULLEST EXTENT PERMISSIBLE BY LAW, SELLER HEREBY DISCLAIMS ALL WARRANTIES EXCEPT THOSE UNDER CLAUSE 7, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS, INCLUDING THOSE OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BUYER IS SOLELY RESPONSIBLE FOR THE USE AND PROCESSING OF THE GOODS DELIVERED, AS WELL AS FOR CHECKING THE GOODS FOR THEIR SUITABILITY FOR THE INTENDED PROCESSES AND PURPOSES. BUYER HEREBY WAIVES ANY AND ALL CLAIMS ARISING THEREFROM. ALL STATEMENTS (WHETHER WRITTEN OR ORAL), DRAWINGS, PHOTOGRAPHS, SPECIFICATIONS AND ADVERTISING ISSUED BY SELLER AND ANY DESCRIPTIONS OR ILLUSTRATIONS CONTAINED IN THE SELLER'S CATALOGUES OR BROCHURES ARE ISSUED OR PUBLISHED FOR THE SOLE PURPOSE OF GIVING AN APPROXIMATE IDEA OF THE GOODS DESCRIBED IN THEM. THEY WILL NOT FORM PART OF THE CONTRACT AND MAY NOT BE RELIED UPON BY BUYER.

## **9 LIMITATION OF LIABILITY**

**9.1** TO THE FULLEST EXTENT PERMISSIBLE BY LAW AND WITHOUT PREJUDICE TO ANY OTHER

LIMITATION OF THE SELLER'S LIABILITY (WHETHER EFFECTIVE OR NOT):

A) SELLER SHALL IN ANY CASE NOT BE LIABLE (IN CONTRACT, TORT OR OTHERWISE) FOR SLIGHT OR (SIMPLE) GROSS NEGLIGENT ACTS.

B) IN NO CIRCUMSTANCES WHATSOEVER SHALL SELLER BE LIABLE (IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS) FOR ANY:

(I) LOSS OF GOODWILL, BUSINESS OR REVENUE OR ANTICIPATED SAVINGS;  
(II) LOSS OF USE;  
(III) LOSS OF REPUTATION;  
(IV) LOSS OF PROFITS OR ANTICIPATED PROFITS OR USE OR COSTS;

(V) EXPENSES INCURRED BY BUYER (INCLUDING ANY LEGAL COSTS AND EXPENSES) IN ATTEMPTING TO ENFORCE ANY OF ITS RIGHTS UNDER THIS CONTRACT;

(VI) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES OR OTHER CLAIMS FOR CONSEQUENTIAL COMPENSATION WHATSOEVER (HOWSOEVER CAUSED) WHICH ARISE OUT OF OR ARE IN CONNECTION WITH THE GOODS OR THE CONTRACT;

(VII) ANY DAMAGES OR LOSSES (DIRECT, INDIRECT OR CONSEQUENTIAL) ARISING OUT OF OR RELATED TO BUYER'S RESALE, OR INTENDED RESALE, OF THE GOODS (OR OTHER GOODS OR SERVICES INCORPORATING, OR RELIANT ON, THE GOODS) TO A THIRD PARTY;  
(VIII) ANY THIRD PARTY CLAIMS, IN CONNECTION WITH THE GOODS, OUT OF SPEC GOODS OR THE CONTRACT, ESPECIALLY BUT NOT LIMITED TO CLAIMS FOR INJURY TO PERSON OR PROPERTY; OR

(IX) ANY LIABILITY FOR BUYER'S INABILITY TO OBTAIN SUBSTITUTE GOODS IN THE MARKET.

C) SELLER'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THE GOODS OR THE CONTRACT (IN CONTRACT, TORT OR OTHERWISE AND WHETHER OR NOT RELATED TO ANY BREACH OF STATUTORY DUTY, MISREPRESENTATION, NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES, AGENTS OR



SUB-CONTRACTORS INCLUDING BUT WITHOUT LIMITATION NEGLIGENCE ARISING UNDER OR IN CONNECTION WITH THE CONTRACT), IS LIMITED TO THE NET CONTRACT PRICE FOR THE GOODS CONCERNED EXCLUDING ALL ADDITIONAL CHARGES, VAT AND ALL OTHER DUTIES, FEES OR TAXES AND ALL COSTS OR CHARGES IN RELATION TO TRANSPORT AND INSURANCE.

- 9.2** TO THE FULLEST EXTENT PERMISSIBLE BY LAW AND WITHOUT PREJUDICE TO THE SELLER'S WARRANTY, BUYER'S SOLE REMEDY SHALL BE IN DAMAGES AS SET FORTH ABOVE.
- 9.3** NO ACTION MAY BE BROUGHT AGAINST SELLER IN CONNECTION WITH THE GOODS OR THE CONTRACT UNLESS PROCEEDINGS ARE ISSUED AGAINST SELLER WITHIN ONE YEAR AFTER BUYER BECAME OR OUGHT TO HAVE BECOME AWARE OF THE CIRCUMSTANCES GIVING RISE THERETO OR WITHIN THE APPLICABLE STATUTORY STATUTE OF LIMITATIONS IF IT CANNOT BE CHANGED BY INDIVIDUAL AGREEMENT.
- 9.4** NOTHING IN THE CONTRACT SHALL OPERATE TO LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR ANY OF THE FOLLOWING:
- A) DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S GROSS NEGLIGENCE OR THAT OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS;
  - B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR
  - C) ANY OTHER MATTER FOR WHICH LIABILITY MAY NOT BE LIMITED OR EXCLUDED ACCORDING TO LAW.
- 9.5** TO THE FULLEST EXTENT PERMISSIBLE BY LAW, SELLER SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES, FOR ANY REPRESENTATIONS, ADVICE OR ASSISTANCE GIVEN (UNDER THE CONTRACT OR OTHERWISE, AND WHETHER BEFORE OR AFTER THE DATE OF THE CONTRACT) BY OR ON BEHALF OF SELLER IN CONNECTION WITH THE GOODS OR THE CONTRACT, UNLESS AND THEN ONLY TO THE EXTENT THAT SELLER HAS MADE SUCH REPRESENTATIONS, AND/OR AGREED TO PROVIDE SUCH ADVICE OR ASSISTANCE, FOR A FEE UNDER A SEPARATE WRITTEN CONTRACT WITH BUYER.
- 9.6** THIS CLAUSE 9 APPLIES NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR BREACH OF A

FUNDAMENTAL TERM OF THE CONTRACT BY SELLER.

## **10 Force Majeure and other conditions**

- 10.1** Seller shall not be liable to Buyer for any breach or damages of any kind in the event that the failure to comply with the Contract relates to any circumstances whatever (whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the Contract ("Force Majeure Event"), including but not limited to:
- a. a delay in the granting of any license(s) or a revocation of licenses required for the Goods in whatever manner; or
  - b. acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; or
  - c. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Seller, or of a third party); or
  - d. difficulties or delays in obtaining raw materials, labor, fuel, power, parts or machinery; or
  - e. an act of God, including but not limited to: war, terrorism, riot, civil commotion, cybercrime attacks and its consequences, malicious damage, breakdown of plant or machinery, natural disasters, extreme adverse weather conditions, default of suppliers or subcontractors, fire, plague, epidemic, quarantine restrictions, or perils of the sea.
- 10.2** Seller may suspend or terminate (in whole or in part) its obligations under the Contract without liability of any kind to Buyer, if, due to any circumstances whatever beyond Seller's reasonable control:
- a. the Seller's reasonable ability to manufacture, supply, deliver, or acquire materials for the production of the Goods by the Seller's normal means is materially impaired (whether or not involving Seller's negligence); or
  - b. a significant collapse of the market for cellulose fiber products and the demand for cellulose fiber products occurs, so that it would be reasonably uneconomic for Seller to continue to perform its obligation to produce the Goods, which are a by-product of Seller's principal business of manufacturing cellulose fiber products.
- 10.3** Seller may suspend or terminate its obligations under the Contract (in whole or in part) with 3 months' notice, without being liable to the Buyer in any way, if the Seller is permanently unable to ensure compliance with the agreed specifications due to a

change in the production process of pulp or fibers (in the framework of which the Goods are also produced as by-products).

- 10.4** In the event of a Force Majeure Event as set forth in Clause 10.1 or the circumstances described in Clauses 10.2 and 10.3 above, Seller will give Buyer a written notice of the existence of such circumstances, the nature of the event and its expected duration. Seller may choose to terminate the Contract (or any part of it), without any liability, upon the occurrence of a Force Majeure Event or the circumstances described in Clause 10.2.

## **11 Termination and suspension**

- 11.1** No order which has been accepted by Seller may be canceled or postponed by Buyer except with Seller's agreement in writing and on terms that Buyer shall indemnify Seller in full and on demand against all loss, costs (including all labor and materials used), damages, charges and expenses incurred by Seller as a result of the cancellation or postponement.

- 11.2** Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the Contract in the circumstances described in Clause 11.3 without any liability and all sums outstanding from Buyer to Seller on any Contract or other contract between Seller and Buyer shall become payable immediately and/or Seller may exercise any of its rights pursuant to Clause 12. Seller may also suspend deliveries while investigating any claim relating to prior shipments (under any Contract or other contract between Seller and Buyer) of Goods.

- 11.3** The relevant circumstances are if:

- a. Buyer fails to take Delivery of the Goods by the date required under Clause 6.1. or fails to pay for the Goods by the due date or breaches any other term of the Contract or does not comply with the requirements of Seller's credit insurance or any other insurance applicable to the Contract or any other contract for the sale or purchase of goods or services between Buyer and Seller; or
- b. Buyer does not obtain or loses coverage from the Seller's credit insurance; or
- c. (i) any distress or execution (whether legal or equitable) shall be levied upon any of Buyer's goods or property or obtained against him/it or (ii) Buyer encumbers, pledges, or in any way charges by way of security for any indebtedness any of the Goods which are the property of Seller or (iii) if Buyer offers to make any arrangement or composition with its creditors or (iv) Buyer becomes bankrupt or insolvent or unable to pay

its debts as they fall due, or (v) if a receiver, administrator, administrative receiver or manager or encumbrancer takes possession of or shall be appointed over the whole or any part of Buyer's business or assets, or (vi) Buyer convenes a meeting of creditors (whether formal or informal), or (vii) Buyer enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or (viii) any resolution or petition to wind up Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or for the granting of an administration order in respect of the Buyer or (ix) Buyer is unable to pay its debts within the meaning of the applicable Insolvency Act or (x) Buyer ceases or threatens to cease to carry on business or (xi) Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to Buyer and notifies Buyer accordingly or Buyer suffers any analogous proceedings under foreign law; or

- d. Seller has reasonable grounds for suspecting that an event in Clause 11.3(b) has occurred or will occur, or that Buyer will not pay for the Goods on the due date, and so notifies Buyer; or
- e. Seller's production costs (including costs of all labor and materials used) in relation to the Goods specified in any Order Confirmation materially exceed the purchase price agreed with Buyer in such Order Confirmation for such Goods.

- 11.4** In addition, Seller shall have the right, by notifying Buyer, to suspend deliveries under the Contract and/or any other contract the Seller may have with Buyer (even though Buyer is not in arrears with any payment) if Seller considers that the amount outstanding in the account of Buyer (whether actually due for payment or not) has reached the limit to which Seller is prepared to allow credit to Buyer, whether or not such limit has been notified to the Buyer.

- 11.5** If Buyer provides Seller with security for the Contract price, reasonably acceptable to Seller, within 3 working days after a notice has been given under Clause 11.3(c) or 11.4, Seller shall withdraw the notice.

## **12 Retention of title**

- 12.1** Seller shall retain title to the contractual goods until the purchase price including any ancillary claims has been paid in full. In the event that the contractual goods are processed, combined or mixed, the retention of title shall continue to apply to a share in

the value of the resulting products corresponding to the contractual goods.

- 12.2 Buyer is obliged to insure the Goods against the usual risks as long as they are the property of the Seller.
- 12.3 In the event of a default in payment by the Buyer, the Seller shall be entitled to the surrender of the contractual goods. The assertion of this claim itself shall not constitute a rescission of the Contract by the Seller. If Seller accordingly takes back the Goods and does not withdraw from the purchase contract, Seller shall be entitled to realize the Goods taken back for Buyer's account and to satisfy Seller's outstanding claims from the proceeds.
- 12.4 Until the Goods have been paid for in full, Buyer may not pledge them to a third party, transfer them by way of security or otherwise encumber them with the rights of third parties. In the event of resale of the contractual goods or a product before expiry of the reservation of title (see 12.1), the Buyer hereby assigns the purchase price claim against the third party to the Seller by way of security.
- 12.5 In the event that a third party, including a state seizure, seizes the goods subject to retention of title, the third party shall be informed of the Seller's rights and shall immediately notify the Seller in writing of the seizure and its details.

### 13 Safety conditions

Buyer acknowledges the hazards associated with the handling, unloading, discharge, storage, transportation, use, disposition, processing, admixture, or reaction (the "Use") of the Goods supplied under the Contract and assumes the responsibility of advising those of its employees, agents, contractors and customers in connection with such Use of the hazards to human health or human or environmental safety, whether such Goods are used singly or in combination with other substances or in any processes or otherwise. In the event that Buyer is provided a Safety Data Sheet ("SDS") by Seller for the Goods, Buyer specifically agrees that it shall advise all of its employees, agents, contractors and customers who will Use the Goods of the SDS, and any supplementary SDS or written warnings that it may receive from Seller from time-to-time.

### 14 Indemnification and third party claims

- 14.1 To the extent not otherwise prohibited by law, Buyer shall fully indemnify, defend and hold Seller, or as the case may be, any other company within the Lenzing Group (i.e. any entity controlled by, controlling or under common control with Lenzing Aktiengesellschaft) and their respective officers, directors, employees and agents harmless from and

against any loss, claim, injury or liability whatsoever (including but not limited to product liability cases):

- a. resulting from any usage of Seller's or any Lenzing name, brand, logo or the Goods including the Lenzing Trademarks by Buyer;
  - b. Buyer's breach of any of the obligations of these General Terms and Conditions of Sale, any contract or any applicable laws or violation of any third party rights; or
  - c. the use, sale, marketing, or manufacturing of any goods or services of Buyer, including those goods and services that incorporate the Goods.
- 14.2 The indemnified party shall notify Buyer of any relevant claim, shall comply with Buyer's reasonable requirements to minimize liability and/or avoid further liability, and shall allow Buyer control of any action and/or settlement negotiations, on reasonable terms. Buyer shall not enter into any agreed judgment or settlement agreement that imposes liability on Seller or any indemnified party without the prior written authorization of Seller or the indemnified party, as applicable.

### 15 Trademarks

The Buyer acknowledges that Lenzing Aktiengesellschaft is the sole and exclusive owner of any and all trademarks and trade names, service marks, trade logos, brands and trade dress or any abbreviations or variation thereof and any other commercial protected rights applied to or used by the Seller in any manner (collectively the "**Lenzing Trademarks**") and Buyer acquires no rights whatsoever to the Lenzing Trademarks. Buyer agrees not to register or use or have any third party register or use any mark(s) that are similar to the Lenzing Trademarks and will assign and transfer to Lenzing Aktiengesellschaft all rights that Buyer may acquire in and to the Lenzing Trademarks, whether by operation of law or otherwise. Buyer shall not use any trademarks or trade names applied to or used by the Seller in any manner not approved by the Seller in writing in advance, however any approval for Buyer's use of any Lenzing Trademarks shall be made pursuant to a trademark license agreement executed separately by and between Buyer and the Seller.

### 16 Miscellaneous

- 16.1 The Contract or any part of it may not be assigned by Buyer without the Seller's prior written consent. Seller may assign, license or sub-contract all or any part of its rights and obligations under the Contract to any person, firm or company.
- 16.2 The Contract shall not be construed to create the relationship of employer or employee, partnership, principal/agent or any type of joint venture relationship, between and among the parties. No

party shall have the authority to contract for or assume obligations of any kind in the name of the other party without that other party's prior written consent.

- 16.3** No failure or delay by Seller to enforce or partially enforce any provision of the Contract shall be construed as a release of its rights relating thereto or to sanction any further breach.
- 16.4** The Contract constitutes the entire understanding of the parties with respect to the transactions contemplated in the Order Confirmation, and supersedes and replaces all prior agreements and understandings, written and oral, among the parties with respect thereto.
- 16.5** If any provision of the Contract and/or these General Terms and Conditions of Sale is found to be illegal, invalid or unenforceable in whole or in part either under enactment or rule of law, it shall have effect to the maximum extent permitted by law, or, if not so permitted, shall be deemed deleted and the legality, validity and enforceability of the remaining provisions of the Contract and/or these General Terms and Conditions shall not be affected.
- 16.6** Any variation of these General Terms and Conditions (including any special general terms and conditions agreed between the parties) shall be inapplicable unless agreed in a signed writing by Buyer and Seller.
- 16.7** Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether under the Contract or not.
- 16.8** NO waiver by Seller of any claim of breach or default concerning any provision of the Contract by Buyer shall be deemed a waiver of any subsequent breach or default and shall in no way affect any other provision of the Contract.
- 16.9** Unless expressly approved by the Seller, Buyer shall not refer to Seller by name or otherwise on any website, or in any proposed media releases or public announcements relating to the Contract or the subject matter of the Contract, including, without limitation, promotional or marketing material (but not including any announcement solely for internal distribution or any disclosure required by legal, accounting or regulatory authorities beyond the reasonable control of the party).
- 16.10** The provisions of Clauses 3, 5, 6, 8, 9, 11, 12, 13, 14, 16, 17 and 18 shall survive termination of the Contract.
- 16.11** It is agreed that the Contract is not being entered for the benefit of any third party and nothing in the Contract shall confer on any third party any right to enforce or any benefit of any term of the Contract.

## **17 Compliance with laws**

- 17.1** If any license or consent of any government or other authority is required for the acquisition, carriage or use of the Goods by Buyer, Buyer will obtain the same at its expense, and if necessary, provide evidence of the same to Seller on request. Failure to do so will entitle Seller to withhold or delay shipment, but failure to do so will not entitle Buyer to withhold or delay payment of the price therefor. Any expenses or charges incurred by Seller resulting from such failure will be paid for by Buyer within ten (10) days of receipt of Seller's written request.
- 17.2** Except as permitted under U.S. Laws, the Goods will not be sold, supplied or delivered by Buyer directly or indirectly to any party or destination that, at the time of such sale, supply or delivery, is declared an embargoed/restricted party or destination by the government of the United States of America or by the United Nations. Buyer confirms that it is not embargoed/restricted by EU Regulations or any other applicable regulations. Within two (2) days after Seller's request, Buyer will provide Seller with appropriate documentation to verify the final destination of any Goods delivered hereunder.
- 17.3** Buyer covenants, warrants and undertakes that it complies with all applicable anti-money laundering laws and regulations and associated rules and regulations (in force from time to time).
- 17.4** Buyer covenants and warrants being not aware and having absolutely no reason to suspect that the money used for payment has been or will be derived from or related to any money laundering or other activities deemed illegal under applicable laws or regulations or otherwise prohibited under any international convention or agreement and Buyer agrees to promptly provide Seller with all information that Seller reasonably request in order to comply with all applicable laws and regulations relating to anti-money laundering.

## **18 Governing law**

- 18.1** The Contract, these General Terms and Conditions and all non-contractual obligations arising from or connected therewith shall be governed by and construed in accordance with the law applicable at the registered seat of Seller without respect to its conflicts of law rules. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Buyer hereby agrees, for Seller's exclusive benefit, that the courts competent for Seller's registered seat shall have sole jurisdiction to hear all claims or proceedings connected with the Goods or the Contract or these General Terms and Conditions or any related non-



contractual obligations. Seller may nevertheless bring claims in any other courts of competent jurisdiction or to arbitration proceeding according to the following provisions.

- 18.2** All disputes or claims arising out of or in connection with this Contract or these General Terms and Conditions including disputes relating to their validity, breach, termination or nullity may upon Seller's sole decision also be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the rules. The place of arbitration shall be the registered seat of Seller. The language of the arbitral proceedings shall be English.

## **19 Language**

These General Terms and Conditions are made in the English language. If these General Terms and Conditions have been translated to a different language than the English language and differences of meaning and interpretation should occur, the English language version shall be the governing language of these General Terms and Conditions.

-----END-----