

GENERAL CONDITIONS OF SALE OF PB LEINER

1. – Definitions

PB: PB Leiner, located at Marius Duchéstraat 260, BE 1800 Vilvoorde, Belgium, site of Tesselender Group S.A., with registered office at Troonstraat 130, BE 1050 Brussels, Belgium, listed in the legal entities register of Brussels (RPR Brussels), VAT number BE 0412.101.728.

Purchaser: the person or company to which PB delivers or intends to deliver products and/or services of whatever nature, and also any blender or person or company who reconditions the products.

Incoterms®: the most recent Incoterms® published by the International Chamber of Commerce.

2. – Applicability

These General Conditions of Sale (“Conditions”) are applicable to all quotes, offers and contracts by which PB delivers any kind of products and/or services to the Purchaser. Any changes to these Conditions are only valid if both parties have expressly agreed in writing. The applicability of general purchasing conditions or other conditions of the Purchaser is hereby excluded, unless expressly otherwise agreed.

3. – Quotations, offers and confirmation of orders

Quotations are made without commitment for PB. PB is bound only by written confirmation of orders. Offers made by PB are binding during the validity period stated in the offer.

4. – Delivery time

Unless otherwise agreed in writing, the delivery time quoted by PB is a best estimate only and without commitment. Late delivery cannot give rise to any indemnity.

5. – Force majeure

PB reserves the right to cancel or suspend orders, the execution of which has become impossible, very difficult or exorbitant as a result of any cause for which PB could not be held responsible and which would constitute an obstacle to the normal course of supplies, manufactures or dispatches (including but not limited to war, accident, fire, flood, strikes, lockouts, sit-ins, total or partial cessation of operations by administrative decision, mobilization, requisition, embargo, import or export restrictions or governmental measures of any kind, shortages of fuel or raw materials, non-respect by a third party of its obligations towards PB and disproportionate price increases by the suppliers of PB, breakdown of plant or machinery, or any other reason which is not attributable to PB).

6. – Duties and taxes

Customs duties and taxes on added value or others, present and future, shall be borne by the Purchaser. Any modification made to these duties and taxes between the date of accepting an order and the date of invoicing is to the charge or to the profit of the Purchaser.

7. – Payment Conditions

(i) Unless otherwise agreed in writing, invoices are payable upon receipt, without discount or deduction of any kind. In the event that Purchaser’s credit worthiness or ability to pay is or may be impaired, in the reasonable opinion of PB, or PB is unable to obtain adequate third-party credit insurance to cover the total outstanding amount due by Purchaser to PB, at terms commonly used by PB in the ordinary course of its business, Purchaser shall upon PB’s request provide security for payment in the form requested by and satisfactory to PB at Purchaser’s expense and PB in addition to any other remedies shall have the right without further notice to postpone or withhold supply of Product to Purchaser until such security is provided. If no such security is provided within a period of maximum 15 business days, PB is entitled to terminate the contract in accordance with Article 12. For any invoice that is not paid on the due date, PB is entitled as of the next day, automatically and without prior notification, to the payment of the legal default interest of which the rate is equal to the reference interest rate rounded to the higher half percentage point. The reference interest rate is the interest rate applied by the European Central bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question, plus seven percentage points.

(ii) Without prejudice to its right to obtain a compensation for its costs in accordance with the legal regulations, PB is also entitled to a reasonable indemnity for its relevant costs of recovery, with a minimum of 3% of the amount of the invoice. Default in the payment of an invoice makes all outstanding invoices due.

8. – Delivery, transfer of risk and title

Unless otherwise agreed in writing, the delivery takes place in accordance to the Incoterms® Ex Works: the risk of the delivered products is transferred to Purchaser when PB places them at the disposal of the Purchaser at PB’s premises or at another named place. Without prejudice to the preceding paragraph, PB and the Purchaser may agree that the transportation is conducted at PB’s expense. The risk of storage, loading, transportation and discharge is in this case also borne by the Purchaser. Title of the products is transferred to the Purchaser upon full payment of all capital, interest and costs. In the event of non-payment, PB is entitled to retain down payments to cover any losses on resale. By placing an order under Incoterms® Ex Works and/or FCA, the Purchaser gives PB a mandate to sign CMR transport documents on behalf of the Purchaser (“consignor”).

9. – Warranty and disclaimer

(i) PB warrants that the products furnished to the Purchaser will comply with all applicable governmental regulations and quality standards at the time the product was put into circulation. During the shelf life that appear on the packaging the product shall conform to the specifications given by PB at the time of delivery, provided the product is handled and stored in closed original packaging under cool, dry and odourless conditions, and in accordance to the recommendations of the Safety Data Sheet (“MSDS”).

(ii) Any recommendation or suggestion relating to the use of the products made by PB either in technical literature or in response to specific enquiry or otherwise, is given in good faith but it is for Purchaser to satisfy himself of the suitability of the products for his own particular purpose. Since the final processing and use of the products are beyond PB’s control, **PB gives no warranty as to the merchantability or fitness of the products for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded except insofar as such exclusion is prevented by law.**

(iii) This warranty is not extended to the particularities of the final product sold by blenders or Purchasers who reconditions the products.

10. – Acceptance of the products and complaints - Remedies

(i) The Purchaser shall immediately examine any delivery upon receipt. Any complaints about apparent defects must be formulated in writing at the latest within eight working days after delivery and complaints for hidden defects must be formulated in writing at the latest within eight working days after discovery of such hidden defect. The use, even of a part of the delivery, shall be considered as the acceptance thereof. Complaints for apparent and/or hidden defects can only be made before processing or mixing the products, unless the Purchaser can demonstrate that a hidden defect could not have been detected before processing or mixing the products. Any claim made outside these time limits shall have no effect. In all cases of complaint, the Purchaser must take all necessary measures to allow PB to examine the products on the spot.

(ii) If a complaint is recognized as justified, the responsibility of PB shall be limited, at its choice, either to the replacement free of charge of the products recognized as defective, or to the refund of the price of these products combined with the re-collection of such products insofar as the Purchaser has not damaged them.

(iii) The replacement, refund and/re-collection of the products shall be the sole and exclusive remedy of the Purchaser in case of defects. PB cannot be held responsible for any other damages.

(iv) In no case may the Purchaser use a complaint as a pretext for suspending or delaying his payments.

11. – Limitation of liability – Indemnity

(i) The warranties and remedies defined in Articles 9 and 10 set out the entire liability of PB in respect of the sale of the products and shall be in lieu of any condition or warranty express or implied by law or otherwise. Under no circumstances shall PB assume liabilities in excess of those defined in Articles 9 and 10 above, including in case of gross fault or negligence.

(ii) Save as provided in Article 11 (i) and outside of the cases described on it, **to the maximum extent permitted by applicable law, the total aggregate liability of PB is limited to the payment of direct damages, up to a maximum amount that equals the price (VAT excluded) paid by the Purchaser for the relevant delivery, except in the event of willful misconduct by PB. The liability of PB for indirect damages is always excluded, except in the event of willful misconduct of PB. Indirect damages include, but are not limited to: consequential damages, loss of profit, revenues or economy, loss of production, costs of business interruption, loss of goodwill or clients, third party claims, reputational or moral damages. PB will have no other liability on whatever ground.** These limitations also apply in case of gross fault or negligence.

(iii) Notwithstanding Article 11 (i) and (ii) nothing in these Conditions shall exclude or limit PB’s liability for death or personal injury or any other liability which cannot be excluded or limited by applicable law, as far as it is proven that such damages were exclusively caused by the products of PB or any fault or negligence of PB.

(iv) PB’s pricing reflects this allocation of risks and limitation of liability.

(v) The limited liability of PB in case of breach of contract will only be accepted when the Purchaser immediately serves a valid written notice to PB, including a reasonable cure period to remedy the problem, and provided (a) PB has not executed its obligation at the end of this term, and that (b) Purchaser is not in breach of contract. The notice has to specify in as much detail as reasonably possible the alleged fault of PB, in order to allow PB to take the necessary action.

(vi) The Purchaser will hold PB harmless against all product liability claims of third parties based on the fact that a product has been delivered by the Purchaser to a third party and that such product was partly composed of materials or products delivered by PB to the Purchaser, unless the Purchaser conclusively proves that the alleged damages have been caused solely by PB’s materials or products.

12. – Termination of the contract

If the Purchaser is in breach of contract, PB will be entitled to terminate the contract unilaterally and also, at its discretion, any order which is in the process of being carried out, without prejudice to all other rights and claims for damages. The contract can be terminated by registered letter automatically, without serving of legal notice.

13. – Purchaser’s undertakings

Unless otherwise agreed in writing, the Purchaser is responsible for obtaining all authorizations and/or licenses for compliance with applicable import laws, laws and regulations. The Purchaser undertakes to give the products the use to which it may reasonably be expected that the product will be put, and undertakes not to use the products in hazardous or ultra hazardous materials, applications or activities. If the Purchaser should have failed to obtain the licenses or authorizations in time for PB to make possible delivery on the dates indicated in the confirmation of order, PB will be entitled to terminate the contract in the conditions foreseen in Article 12 above, even when the failure of the Purchaser should be due to force majeure.

14. – Confidentiality

All PB’s offers are confidential and proprietary information that shall not be disclosed outside the Purchaser and shall not be duplicated, used or disclosed in whole or in part, for any purpose other than to evaluate the acceptance of PB’s offer.

15. – Severability

Should any term, clause or provision contained in these Conditions be declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision contained in these Conditions.

16. – Applicable law and jurisdiction

All contracts between PB and the Purchaser are exclusively governed by the laws of Belgium, with exception of the United Nations Convention on Contracts for the International Sale of Goods which are hereby excluded. Any disputes arising out of or in connection with these contracts shall be irrevocably submitted to the courts of Brussels, Belgium.