

GNT GENERAL TERMS AND CONDITIONS OF SALE (“Conditions”)

These Conditions apply to all delivery of goods and/or supply of services by GNT International B.V., Industrieweg 26, 5731 HR Mierlo, The Netherlands, including each of its subsidiaries and affiliates (“GNT”) to the other party (“Customer”). These goods and services are herein, both separately and jointly, referred to as: the “Goods”. The Conditions apply to these and all similar dealings between GNT and Customer and apply even if diverging conditions have been made on the side of Customer: such diverging conditions shall not be binding upon GNT even if GNT has not expressly contradicted them.

1. Quotations, orders and confirmation

1.1. GNT’s quotations and offerings (“Quotations”) are subject to change. It’s not until GNT’s written confirmation (“GNT’s Confirmation”) has been dispatched that the Agreement becomes valid.

1.2. Except as provided for in Article 5.2, any samples supplied to Customer (“Samples”) are supplied solely for information purposes and do not constitute any condition or warranty of any kind. Customer must satisfy itself as to the fitness for purpose prior to ordering the Goods.

2. Prices

2.1. Prices and currencies of GNT’s Goods are as set out in GNT’s Confirmation. Unless agreed otherwise, GNT’s prices (“Prices”) include standard packaging, but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges.

2.2. Unless the prices have been indicated as firm by GNT in GNT’s Confirmation, GNT is entitled to increase the price of any Goods to be delivered, if the cost price determining factors have been subject to an increase.

3. Payment and Customer’s credit

Payment shall be made on the basis of net cash, to be received by GNT within fourteen (14) days following the date of GNT’s invoice for the Goods by means of transfer into the bank account mentioned on the invoice.

4. Delivery.

4.1. Unless expressly stated otherwise in GNT’s Confirmation, all deliveries of Goods shall be FCA (INCOTERMS 2010) and any times or dates for delivery by GNT are estimates and shall not be of the essence. GNT is entitled to deliver the Goods in parts. Where any delivery is more than one week later than Customer’s requested delivery date due to any cause, GNT shall alert Customer in a timely manner and promptly submit a recovery plan for all impacted shipments, however in no event shall GNT be liable for any delay in delivery.

4.2. The remedies under this article 4 are exclusive and in lieu of any other remedy for delay in delivery or non-delivery.

5. Examination and conformity to specifications

5.1. On delivery and during the handling, storage and transportation of the Goods (the “Use”). Customer shall examine the Goods and satisfy itself that the Goods delivered meet all contractual requirements. Complaints about the Goods shall be made in writing and must reach GNT not later than seven (7) days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and seven (7) days from the date on which any other claim was or ought to have been apparent, but in no event later than six (6) months from the date of delivery of the Goods. Use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods. If, in spite of prior examination by Customer defects will become visible solely when processing the Goods, GNT must be notified without delay in writing. If so, Customer must hold the unprocessed Goods available for examination.

5.2. A determination of whether or not delivered Goods conform to the agreed specifications as stated in GNT’s Confirmation or, in the absence of agreed specifications, to the most recent specifications held by GNT at the time of delivery of the Goods (the “Specifications”), shall be done solely by analysing the samples or records retained by GNT and taken from the batches or production runs in which the Goods were produced in accordance with the methods of analysis used by GNT. Minor variations in quality resulting from the nature of the Good(s) do not justify a notification of defect. Defects in some of the Goods do not entitle Customer to reject the entire delivery of the Goods.

5.3. GNT reserves the right to change or modify the Specifications, construction and/or manufacture of Goods and to substitute materials used in the production and/or manufacture of Goods from time to time upon prior notice

5.4. In the event of a recall of the Goods instigated by GNT or a competent authority, Customer shall in consultation with GNT take all necessary actions that may be appropriate. Customer shall not make public any actual or planned recall of the Goods, except as provided by applicable mandatory law or as instructed by GNT.

5.5. If any Goods are found to be non-conforming or must be recalled the GNT shall at his option (i) replace the Goods with conforming Goods, without any additional expense to the Customer, or (ii) reimburse to the Customer the price paid for the Goods and thereby terminate the contract as regards those Goods. Unless otherwise agreed in writing, the remedies under this article 5 are exclusive and in lieu of any other remedy for non-conformity.

6. Transfer of risk and property

The risk of the Goods shall pass to Customer on delivery. The ownership of the Goods shall not pass to Customer and full legal and beneficial ownership of the Goods shall remain with GNT unless and until GNT has received payment in full for the Goods. Customer shall store the Goods so that they are readily identifiable as GNT’s Goods, until such time.

7. Limited warranties.

7.1. GNT will make every reasonable effort to deliver Goods that comply with the Specifications at the time indicated in GNT’s Confirmation. However, due to the nature of the Goods, GNT solely warrants that the Goods shall substantially conform to the Specifications on the date of delivery. GNT’S OBLIGATION IN RELATION TO ANY DELAY OR ANY NON-CONFORMITY SHALL BE LIMITED AS STIPULATED IN ARTICLE 4 (DELIVERY) AND ARTICLE 5 (EXAMINATION AND CONFORMITY TO SPECIFICATIONS).

7.2. Any of GNT’s obligation to replace or credit shall be contingent upon receipt by GNT of timely notice of any alleged non-conformance of Goods. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PURPOSE, OR ABSENCE OF INFRINGEMENT OF ANY CLAIM IN ANY INTELLECTUAL PROPERTY RIGHT COVERING THE GOODS.

8. Limitation of liability

GNT’S LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE GOODS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER’S PAYMENTS FOR THE GOODS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL GNT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

9. Intellectual Property

All intellectual property rights or any other proprietary rights in and to the Goods or related to the Goods, including but not limited to their formulae, design, packaging, production-process and know-how, and any modifications or developments thereto, as well as the trademarks and trade names under which the Goods are marketed shall remain the sole and exclusive property of GNT.

10. Compliance with laws and standards

GNT makes no promise or representation that the Goods shall conform to any law, statute ordinance, regulation, code or standard (“Laws and Standards”), unless expressly stated in GNT’s Confirmation or in the Specifications. Customer acknowledges that the Use of the Goods may be subject to requirements or limitations under Laws and Standards. Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with the Use, processing, transfer and sale of the Goods; and (ii) obtaining all necessary approvals, permits or clearances for such Use, processing, transfer and sale of the Goods.

11. Severability and conversion

In the event that any provision of these Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity or enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

12. Limitation of action

No action by Customer shall be brought unless Customer first provides written notice to GNT of any claim alleged to exist against GNT within thirty (30) days after the event complained of first becomes known to Customer and an action is commenced by Customer within twelve (12) months after such notice.

13. Governing law and jurisdiction

The legal relationship with Supplier, its employees, officers and representatives is subject to the laws of the Netherlands and any and all disputes resulting from or associated with said relationship, regardless the legal basis, shall be subject to the exclusive jurisdiction of the courts of Amsterdam, the Netherlands. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.