

General Terms and Conditions (International Sales)

MAPA GmbH - Newell Brands

1. Applicability

- 1.1 These terms and conditions of sale ("Conditions") govern the offering, sale and delivery of all goods ("Goods") from or on behalf of our Company ("Company") to customer ("Customer").
- 1.2 Unless and to the extent explicitly otherwise agreed in writing by authorised representatives of Company, the Conditions constitute the entire understanding between Company and Customer with respect to the subject matter hereof, and supersede all prior representations, negotiations, understandings, agreements and undertakings, whether written or oral, with respect to the subject matter hereof.
- 1.3 Any communication or conduct of Customer which confirms an agreement for the delivery of Goods by Company, as well as acceptance by Customer of any delivery of Goods from Company shall constitute an unqualified acceptance by Customer of these Conditions.
- 1.4 The Conditions prevail at all times over the order or purchasing terms and conditions of Customer even when the latter (i) were communicated to Company prior to the communication of the Conditions to Customer; (ii) explicitly exclude the applicability of the Conditions and/or (iii) were not protested by Company.
- 1.5 Company shall be entitled to update and/or amend these Conditions regularly. By and as of the moment of notifying Customer of such update or amendment or by sending Customer the updated or amended Conditions, these revised Conditions shall apply to all dealings between Company and Customer.

2. Quotations, Orders and Contracting

- 2.1 Quotations issued by Company (in whatever form) are not binding upon Company, are revocable and subject to change without notice.
- 2.2 Orders are not binding until accepted by Company in writing ("Confirmation"). Company shall be entitled to refuse an order without indication of its reasons.
- 2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

3. Delivery and Acceptance

- 3.1 Unless otherwise set out in the Confirmation or any other document accepted in writing by Company, all deliveries of Goods shall be **EXW** Company's production facility (**Incoterms 2010**). Customer shall accept the Goods upon delivery.
- 3.2 Goods are delivered in the packaging as determined by Company and, as the case may be, subject to payment by Customer of a guarantee.
- 3.3 Unless otherwise set out in the Confirmation or any other document accepted in writing by Company, any times or dates for delivery by Company are estimates and shall not be of the essence. In no event shall Company be liable for any delay in delivery. Delay in delivery of any Goods shall not relieve Customer of its obligation to accept delivery thereof, shall not justify a price reduction nor a claim for damages. Company is entitled to deliver the Goods in parts and to invoice separately.

4. Transfer of risk and property

- 4.1 The risk in the Goods shall pass to Customer as per the applicable Incoterms.
- 4.2 However, notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to Customer until Company has received in cash or cleared funds payment in full for all Goods delivered to Customer under this and all other contracts between Company and Customer for which payment of the full price of the Goods thereunder has not been paid. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between Company and Customer under which the Goods were delivered.

5. Prices and Payment

- 5.1 Prices, rates and currencies are as set out in the Confirmation.
- 5.2 In the event the prices and rates are denominated in Euro and the Euro has ceased to be a lawful currency (either in part or as a whole), the prices and rates for the Goods as well as any other amount referred to in the present general terms and conditions will be automatically converted into United States Dollars (USD) using the exchange rate EUR/USD effective the day before the Euro has ceased to be a lawful currency. In the event the conversion to USD is not possible Customer shall indemnify Company for any loss suffered by applying an unfavourable compulsory exchange rate.
- 5.3 Unless otherwise set out in the Confirmation or any other document accepted in writing by Company, Company's prices include standard packaging but 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 ("Taxes"). The amount of any Taxes levied in connection with the sale of the Goods to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by Company to Customer.
- 5.4 Company reserves the right to change prices relating to Goods still to be delivered, when the cost for production and/or commercialisation thereof has increased.
- 5.5 Unless otherwise set out in the Confirmation or any other document accepted in writing by Company, payments are due **thirty (30)** days as of the invoicing date. Invoices are payable on the statutory seat of the Company.
- 5.6 In the event invoices are not paid by their due date, without prejudice to any other rights or remedies of Company, Company will automatically charge the Customer
 - (a) interest on overdue amounts, without prior notice, at a rate equal to the Reference Interest Rate applied by the European Central Bank plus **eight (8)** percentage points. The applicable Reference Interest Rate is the European Central Bank's main refinancing rate. Outside the Euro zone the rate is set by the relevant national central bank. The reference rate on 1st January applies until 30 June while the reference rate of 1st July applies until 31 December;
 - (b) the judicial and extrajudicial costs (including but not limited to collection agency and legal fees) and incurred by Company in relation to the collection of the outstanding amounts due. A minimum fixed amount equivalent to € 40 will always be charged as compensation for recovery costs .
 - (c) In case the European Central Bank's Reference Interest Rate ceased to be a lawful reference interest rate, the total interest on overdue amounts will amount to 8%.
- 5.7 Company may set off any sums due by Customer against any sums due by Company to Customer. All payments made by Customer or any refunds due to Customer may be applied first in settlement of any interest due, and secondly, by Company in its absolute discretion in reduction of any amounts due to Company on any account whatsoever. To the maximum extent permitted by applicable law, Customer waives its set-off rights of whatever kind or nature it may have against Company's claims for payment.

5.8 At all times Company has the right without prior acceptance by Customer, to introduce a Minimum Order Value ("MOV") which may differ depending on the nature and amount of Goods purchased by Customer and/or impose a minimum charge for delivery of the Goods to the Customer.

6. Conformity, Warranty and Liability

6.1 On delivery and during the handling, use, processing, transportation, storage and sale of the Goods (the "Use"), Customer shall examine the Goods and satisfy itself that the Goods delivered meet the specifications for the Goods agreed in writing or, in the absence thereof, to the most recent specifications, if any, held by Company at the time of delivery of the Goods ("Specifications"). Complaints about the Goods shall be made in writing and must reach Company not later than **eight (8)** days from the date of delivery. Use 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.

6.2 Company solely warrants that on the date of delivery the Goods shall conform to the Specifications. If and to the extent Goods fail to meet such warranty, Company may at its own option either repair or replace the Goods at no charge to Customer, or issue a credit for any such Goods in the amount of the original invoice price.

6.3 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.

6.4 To the maximum extent permitted by applicable law, Company's total liability for any claim, liability or expense of any nature shall not exceed the sum of Customer's payments for the portion of the Goods that are the subject of the claim. Company shall not be liable for any indirect, special, incidental or consequential damages of any kind including, without limitation, disruption of the business, claims from third parties, damages due to business interruption or lost profits, loss of savings, of competitive advantage or of goodwill whether or not foreseeable, and regardless of other cause of such damages even if the party has been advised of the possibility of such damages in advance under any legal theory (tort, contract or otherwise), to the maximum extent permitted by applicable law.

6.5 Nothing in the Conditions excludes or limits Company's liability for fraud and wilful misconduct.

7. Product Changes and Commercial Communications

7.1 Company 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 without notice.

7.2 Customer acknowledges that data in Company's catalogues, specification sheets and other descriptive publications distributed or published on its websites by Company, may be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Company in relation to the Specifications, the Goods and the Use thereof shall be furnished for the accommodation of Customer only. Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods.

8. Suspension and Termination

8.1 In the event that (i) Customer is in default of performance of its obligations towards Company; and/or (ii) Company has reasonable doubts with respect to Customer's performance of its obligations to Company and Customer fails to provide to Company adequate assurance of Customer's performance before the date of scheduled delivery and in any case within **thirty (30)** days of Company's demand for such assurance; and/or (iii) Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation), or any bankruptcy proceeding shall be instituted by or against Customer, or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer, or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; without prejudice to any other rights and/or remedies of Company, Company may by notice in writing forthwith

(a) demand re-delivery and take repossession of any delivered Goods which have not been paid for, for which purpose Customer hereby grants an irrevocable right and license to Company to enter upon all or any of the premises where the Goods are or may be located and all costs relating to the recovery of the Goods shall be for the account of Customer; and/or

(b) suspend its performance or terminate Company's Confirmation for outstanding delivery of Goods unless Customer makes such payment for Goods on an in advance basis or provides adequate assurance of such payment for Goods to Company, without any intervention of courts being required and without liability for Company of whatsoever kind arising out of or in connection with such suspension or termination.

8.2 In any such event, all outstanding claims of Company shall become due and payable by Customer immediately with respect to the Goods delivered to Customer and not re-possessed by Company.

9. Intellectual Property

9.1 The name(s), trademark(s), and trade name(s) utilised by Company in the conduct of its business and all intellectual property rights and/or other right, title and interest therein, are the sole property of and vest in Company and/or its licensors. Unless otherwise agreed, Customer shall not use the name(s), trademark(s), or trade name(s) utilised by Company in the conduct of its business without prior written acceptance by Company.

9.2 Customers based in the European Economic Area ("the EEA") are not allowed to sell to any customer based in the EEA any Goods obtained from any source outside the EEA bearing the trademarks owned by Company or Company's affiliates, unless Company or Company's affiliates have clearly consented to the sale of those specific Goods in the EEA. Furthermore, for such EEA based customers appointed to serve any Territory within the EEA, it is specifically agreed that Company does not grant its consent to the sale of the Goods outside of the EEA and it reserves the right to take all necessary legal actions (including, but not limited to, injunctions and actions for damages) to ensure the maximum protection of its valid intellectual property rights, including its trademark rights. Customers expressly agree and further undertake to communicate the above to any third party purchasing the Products for purposes of resale.

9.3 Unless otherwise specified and agreed by Company or Company's affiliates, Customers based outside the EEA are not allowed to sell to any customer in the EEA any Goods bearing the trademarks owned by Company or Company's unless they have clearly consented to the sale of those specific Goods in the EEA.

10. Miscellaneous

10.1 Incentive programmes (i.e. rebates, co-operative advertising or other remunerative or financial incentive) – In case Company has agreed to grant any rebates and/or additional discounts to Customer in relation to the commercial relationship, such rebates and/or additional discounts will be paid only if claimed by Customer within 12 months from the moment they become due. Should Customer fail to claim any such rebates and/or additional discounts within the 12 months time-limit, Customer is considered to have waived its rights as to the said rebates and/or additional discounts and these will no longer be due.

10.2 Force Majeure – Company shall not be liable for any damage, loss, claim, demand, cost, tax or expense of whatever nature suffered or incurred by Customer arising out of or in connection with the non-compliance or delay in compliance of obligations resulting from an act or event beyond the reasonable control of Company, its agents or contractors or their sub-agents and sub-contractors, affecting the

performance by Company of its obligations hereunder, including without limitation disaster, fire, flood, earthquake, elements of nature, acts of God, actual or threatened terrorist attacks, acts of war, sabotage, explosion, riots, civil disorders, rebellions, revolutions and strikes, lockouts or labour disputes, government acts, accident or breakdown of plant or machinery, shortage of materials, failure by a utility provider (including electricity, gas, network or telecom provider) to provide services and any actions or omissions of third parties beyond its reasonable control. The fact the Euro has ceased to be a lawful currency does not constitute an act of force majeure and all debts of Customer will automatically become due the day after the Euro ceased to be a lawful currency.

- 10.3 Independent contractors – Company and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.
- 10.4 Assignment – Customer shall not, without Company's prior written consent, assign, transfer or novate any of its rights, liabilities or obligations hereunder. Company has the right to assign, transfer or novate any of its rights, liabilities or obligations hereunder.
- 10.5 Survival – The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions which are intended to continue to have effect after such termination.
- 10.6 Severability – If a provision of the Conditions is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, if possible, and insofar as such clause is invalid, illegal or unenforceable, be replaced by a valid, legal and enforceable clause reflecting as close as possible the initial intentions. If the invalid, illegal or unenforceable provision cannot be validly replaced, then no effect shall be given to said clause and it shall be deemed not to be included in the Conditions, such without affecting or invalidating the remaining provisions of the Conditions.
- 10.7 Language – The Conditions have been drawn up in English and its provisions will be interpreted in accordance with their generally accepted meanings in the English language. Any translation of the Conditions is for the convenience of Customer only, and shall not be binding towards any party. In the event of any inconsistency between the English original and its translation, the provisions of the English version shall prevail.
- 10.8 Waiver – The rights and remedies of each party under, or in connection with the Conditions may be waived only by express written notice to the other party. Any waiver shall apply only in the instance, and for the purpose for which it is given. No right or remedy under, or in connection with, these Conditions shall be precluded, waived or impaired by (i) any failure to exercise or delay in part; or (ii) any of the above in relation to any other right or remedy (be it of similar or different character).
- 10.9 Governing Law and Jurisdiction – The Conditions are governed by, and construed in accordance with, the national laws of **England and Wales**, without reference to the conflict of law rules. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded. The courts of **England** shall have exclusive jurisdiction to settle any and all disputes which may arise out of or in connection with this Conditions.