

Wilmar Distribution Pte. Ltd. General Terms and Conditions of Sale

These General Terms and Conditions of Sale ("**Terms**") are issued by Wilmar Distribution Pte. Ltd. ("**Seller**"), apply to all sales of goods and services offered by Seller ("**Products**") to a buyer ("**Buyer**"), and form an integral part of, and are incorporated into: (i) all quotations and offers made by Seller; (ii) all acceptances, acknowledgments, and confirmations by Seller of any orders by Buyer; (iii) and all contracts (each a "**Contract**"), relating to the sale by Seller and purchase by Buyer of Products.

- 1 **Acceptance.** Buyer, by: (a) placing an order for Products pursuant to quotations or offers made by Seller referencing these Terms; and/or (b) making payment for Products pursuant to any sales orders and/or invoices referencing these Terms, shall be deemed to have: (i) accepted these Terms; and (ii) the incorporation of these Terms into the Contract for such Products. These Terms take precedence over Buyer's supplemental or conflicting terms and conditions. Neither Seller's commencement of performance of the Contract nor delivery of Products shall be deemed or construed as acceptance of Buyer's supplemental or conflicting terms and conditions.
- 2 **Orders.** All purchase orders issued by Buyer are subject to acceptance by Seller, and Seller may, at its sole discretion, refuse to accept any purchase order. Buyer is responsible for ensuring that purchase orders (i) are issued correctly; (ii) specify the volume and type of Products required; and (iii) specify the requested delivery date and location.
- 3 **Price and Payment**
 - 3.1 The price of Products ("**Price**") shall be set by Seller in its sole discretion and will be notified by Seller to Buyer from time to time (including without limitation in a price list, sales agreement, sales order, or tax invoice). The Price is exclusive of Goods and Services Tax (GST) and similar taxes, customs duties (if applicable), and any other taxes or duties, and Buyer shall bear all taxes and duties where required.
 - 3.2 In consideration for the sale of Products to Buyer, Buyer shall pay the Price to Seller (as stated on Seller's invoice or any other applicable document) without any deduction, withholding, set-off or counterclaim whatsoever. Such payment shall be made in the manner and within the time stipulated by Seller. If Buyer fails to make payment on or before the due date, Seller shall be entitled to: (a) charge interest on all outstanding amounts from the day after the due date for payment until the date on which it is actually paid in full, at the rate of 6% per annum; (b) require Buyer to make payment in advance of any delivery not yet made; and/or (c) suspend any further deliveries to Buyer. Without prejudice to the foregoing, Buyer shall reimburse Seller for any costs incurred in collecting any late payments (including without limitation legal fees and expenses).
- 4 **Delivery; Duty to Inspect**
 - 4.1 Seller will deliver, or procure the delivery of, Products to the place stipulated by Buyer ("**Delivery Place**") in accordance with the terms agreed between the parties. All delivery dates are estimates only and are not binding on Seller, and time shall not be of the essence. Seller shall not be liable for any late delivery, nor shall any delay of delivery constitute a breach of the Contract.
 - 4.2 Products shall be deemed to have been inspected by Buyer on the date of delivery. Any claims relating to missing or incorrect Products or to defects or damage which are apparent on a reasonable inspection of Products must be made to Seller within three (3) days from the date of delivery, and any other claims relating to defects or damage which are not apparent on a

reasonable inspection of Products must be made to Seller within thirty (30) days from the date of delivery. If any such claims are made, Buyer shall: (a) preserve the relevant Products in the state in which they were delivered; (b) submit photographs and other evidence of such defects or damage to Seller (if applicable) upon Seller's request; and (c) if requested by Seller, allow Seller to inspect the relevant Products at the location of Products and/or return the relevant Products to Seller at Seller's costs in the same condition as when the relevant Products were first delivered to Buyer.

- 4.3 Provided that Buyer has fully complied with clause 4.2 and that Seller is satisfied with Buyer's claim, Seller will at its sole discretion replace the missing, incorrect, defective or damaged Products (as the case may be) or provide a credit for such Products.
- 4.4 Seller's liability to Buyer in respect of missing, incorrect, defective or damaged Products is limited to replacement or credit in accordance with clause 4.3.
- 4.5 If, for any reason, Buyer fails to accept delivery of any Products, or if Seller is unable to deliver any Products to the applicable Delivery Place because Buyer has not provided appropriate instructions, documents, licenses, or authorizations, then risk of loss to such Products shall pass to Buyer, such Products shall be deemed to have been delivered, and Seller, at its option, may store such Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The quantity of Products as recorded by Seller on dispatch from its place of business or such other location as nominated by Seller is conclusive evidence of the quantity received by Buyer on delivery, unless Buyer can provide conclusive evidence proving the contrary.

5 Title and Risk of Loss

- 5.1 Title. Title to all Products passes to Buyer upon delivery of Products to the Delivery Place. Notwithstanding any such delivery, Seller shall be entitled to maintain an action against Buyer for any unpaid Price of Products without prejudice to any other right or remedy available to Seller.
- 5.2 Risk of loss. If Seller and Buyer have agreed to apply Incoterms or similar terms to the sale of Products, risk of loss passes to Buyer according to the Incoterms or similar terms. If Incoterms (or similar terms) do not apply but parties have reached agreement on the passing of risk, risk of loss passes to Buyer as agreed between the parties. If none of the foregoing apply, risk of loss passes to Buyer upon delivery of Products to the Delivery Place.

6 Buyer's obligations and restrictions

- 6.1 Buyer shall: (a) immediately notify Seller, upon being aware: (i) of any actual or potential defect in any Products; (ii) of any matter concerning any Products which could have an impact on Seller; and/or (iii) of all complaints or claims relating to any Products; (b) not admit liability on behalf of Seller in respect of any complaint or claim relating to any Products; (c) not resolve or settle any complaint or claim relating to any Products which may result in Seller incurring any liability (whether to a customer, Buyer or any other person), unless written permission has been given by Seller; (d) observe all laws relating to the regulations, codes, use or sale of any Products; (e) support and comply with the requirements of any product recall program initiated by Seller or any government agency and all reasonable directions of Seller in respect of such product recall program. Buyer shall not voluntarily initiate any recall without the prior written consent of Seller; (f) not alter, obscure, remove, replace, conceal or otherwise interfere with any identifier or batch number applied to any Products by Seller for the purpose of tracking the relevant Product; (g) not make any representation, or give any warranty, in relation to any Products not expressly authorised in writing by Seller; (h) not engage in any advertising, marketing or promotional activities in relation to Products without the prior written consent of Seller; (i) not do anything which might adversely affect the goodwill or reputation of Products and/or Seller or any of its products; and (j) not make any representation or statement that it is the exclusive or sole distributor or importer of any Products.
- 6.2 Buyer shall at all times carry on its business as principal and arrange and conclude sales of Products on its own behalf and in its own name. Seller shall not be liable (except as provided at law) to any purchaser of Products from Buyer.

7 No warranty; Exclusion of liability

- 7.1 Seller warrants to Buyer that Products will conform substantially to Seller's specifications for each Product.

- 7.2 Apart from the warranty set out in clause 7.1, Seller makes no other representations or warranties (whether express or implied) whatsoever with respect to Products (including, without limitation, any warranties of merchantability, fitness for a particular purpose, or non-infringement, whether arising by law, course of dealing, course of performance, usage of trade, or otherwise). Save for the warranty in clause 7.1, Seller hereby specifically disclaims and excludes all representations and warranties (whether express or implied) with respect to Products to the maximum extent permitted by law.
- 7.3 To the maximum extent permitted by law, Seller excludes all liability for any losses or damages which Buyer or anyone else suffers, incurs or is liable for, in connection with the sale or supply of any Products.
- 7.4 Seller's sole liability for breach of any warranty or obligation implied or conferred by law which cannot be excluded shall be limited to the replacement or repair of applicable Products or the payment of the costs of replacing or repairing such Products.
- 7.5 To the maximum extent permitted by law, in no event shall Seller be liable to Buyer or any third party for any: (a) loss of business, sales, contract, opportunity, profit or anticipated profit, income, and/or revenue; (b) consequential, indirect, incidental, special, exemplary, punitive and/or enhanced damages and/or losses; (c) diminution in value; (d) increased costs and/or (e) loss of and/or damage to goodwill or reputation, regardless of whether any of the foregoing items (a) to (e) were foreseeable and whether or not Seller was advised of the possibility of any of the foregoing items (a) to (e).
- 7.6 Seller's maximum aggregate liability to Buyer for any claim, whether arising out of or related to breach of contract, tort (including negligence), or otherwise: (a) where the claim is related to Products, shall not exceed the Price attributable to the relevant Products which are the subject of the claim; or (b) where the claim is not related to Products, shall not exceed the total Price actually received by Seller in the three (3) months preceding the date on which the alleged cause of action arose.
- 7.7 Nothing herein shall have the effect of limiting or excluding Seller's liability for fraud, any breach of the obligations implied by law which cannot be excluded, death or personal injury resulting from its own negligence, and/or any other liability (if any) to the extent the same may not be limited or exceeded as a matter of law.
- 7.8 All defect and liability claims howsoever arising are subject to a limitation period of one (1) year from statutory commencement of the limitation period, or where the foregoing is not permissible under the relevant law, for the shortest period permitted thereunder.
- 8 Intellectual Property Rights. Buyer acknowledges and agrees that Seller or its licensors are the sole and exclusive owners of all Product IPR. In these Terms, "**Product IPR**" means all intellectual property rights in relation to, embodied in, or in connection with Products, including without limitation all trade marks used in relation to Products. Buyer acknowledges and agrees that it does not own, and does not obtain, any right, title or interest in or to any Product IPR and/or any intellectual property rights of Seller or its licensors. Buyer undertakes not to attack, cancel, revoke, invalidate, remove, permit or cause any act to affect the validity of, question, and/or seek to impeach: (a) any Product IPR; (b) any intellectual property rights of Seller or its licensors; (c) any goodwill associated with any Product IPR or any intellectual property rights of Seller or its licensors; and/or (d) any goodwill in relation to Products or owned by Seller or its licensors, nor permit, authorise or assist any third party to do any of the foregoing acts. Buyer undertakes not to apply to register, register, or seek any rights in relation to: (i) any Product IPR; and/or (ii) any intellectual property rights of Seller or its licensors. Buyer undertakes and agrees to take any steps reasonably required by Seller and/or its licensors to maintain the validity and enforceability of any Product IPR or any intellectual property rights of Seller or its licensors.
- 9 **Indemnity**
- 9.1 Buyer shall indemnify, defend, and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Indemnified Parties**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including legal fees, costs, the fees of enforcing any right to indemnification under these Terms, and costs of pursuing any insurance providers) incurred by or awarded against any of the Indemnified Parties, relating to, arising out of, resulting from or occurring in connection with: (a) any breach of these Terms and/or the Contract; (b) any violation by Buyer of applicable laws or regulations; and/or (c) any negligence or wilful misconduct on Buyer's part.

10 **Force Majeure**

- 10.1 Where an act of God, war, epidemic, pandemic, revolution or any other unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances, a governmental restraint, a shortage or unavailability of raw materials, production capacity or transportation, and/or any other event or situation which is not within the reasonable control of Seller (collectively, "**Force Majeure**") prevents or delays Seller from performing an obligation under any Contract, that obligation is suspended as long as the Force Majeure continues and Seller will not be liable for any delay or non-performance during the period of suspension.

11 **Confidentiality**

- 11.1 In these Terms, "**Confidential Information**" means: (a) all information, including trade secrets, know-how, scientific, technical, current and future product, market or pricing information, customer lists, product or service plans, business plans, business activities, supplier lists, marketing plans, equipment types, financial projections, business forecasts, sales and merchandising information, processes, designs, engineering plans, processes, data, prices, costings, strategies, formulae, recipes, raw materials, and operating conditions, relating to Products and/or Seller; and (b) all information that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, disclosed or made available by Seller to Buyer.
- 11.2 Buyer undertakes and agrees: (a) to keep all Confidential Information confidential; (b) not to disclose any Confidential Information to any other person or entity; (c) not to use any Confidential Information for any purpose other than for or in connection with the performance of its obligations under the Contract; and (d) to forthwith return, on request by Seller, any documents or materials containing any Confidential Information.
- 11.3 Buyer's confidentiality obligations contained in clause 11.2 shall not apply to any information which: (a) is or becomes part of the public domain through no fault or breach of these Terms by Buyer or its employees, agents or representatives; (b) is already in the possession of or known to Buyer prior to disclosure to Buyer provided that such information is not subject to any confidentiality obligations; (c) is received by Buyer by a third party who is not under, or in breach of, any confidentiality obligations in disclosing the same; (d) is independently developed by Buyer whether on its own or jointly with a third party without use of or reference to any Confidential Information; (e) is disclosed pursuant to an order of a court of competent jurisdiction provided prompt written notice of such order is given to Seller; or (f) Seller authorises, in writing, for release.
- 11.4 Buyer is permitted to disclose Confidential Information only to its representatives and employees who are required to have access to or be in possession of Confidential Information for the purposes of performing Buyer's obligations under the Contract, provided always that: (a) any Confidential Information is disclosed only on need-to-know basis; (b) Buyer may only disclose such portion of Confidential Information strictly necessary for the performance of Buyer's obligations under the Contract; and (c) Buyer must take all necessary precautions and actions to cause and ensure that all such representatives and employees fully comply with the confidentiality obligations imposed on Buyer under clause 11.2. Buyer shall be and remain liable for any breach of this clause 11 by its representatives and employees.
- 11.5 The confidentiality obligations set out in this clause 11 shall survive the termination of the Contract.
- 11.6 Buyer acknowledges and agrees that any breach or threatened breach of this clause 11 may result in substantial, continuing, and irreparable injury to Seller. Buyer acknowledges and agrees that monetary damages alone would not be an adequate remedy for the breach or threatened breach of this clause 11. Therefore, Buyer hereby acknowledges and agrees that, in addition to any other remedy that may be available to Seller, Seller shall be entitled to seek injunctive relief, specific performance or other equitable relief concerning any breach or threatened breach of this clause 11 without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach.
- 11.7 Nothing in this clause 11 shall grant Buyer any right or licence over any Confidential Information.

12 **Termination**

- 12.1 Seller may terminate any Contract immediately by written notice to Buyer if Buyer: (a) commits a material breach of such Contract which, in the reasonable opinion of Seller, is not capable of remedy; (b) commits a material breach of such Contract which is capable of remedy and Buyer

fails to remedy the breach within 7 days after being required in writing to do so; or (c) becomes insolvent, goes into liquidation whether by voluntary or involuntary action, makes an assignment or composition for the benefit of its creditors, has a receiver or receiver and manager appointed, suspends or ceases its business activities or performs any other act which reasonably suggests that it is insolvent. Seller and Buyer each acknowledges and agrees that a failure to make payment by the due date under a Contract constitutes a material breach of such Contract.

- 12.2 Upon termination of any Contract: (a) Buyer must pay for all Products set out in purchase orders which have been accepted by Seller as well as any other Products which Buyer has ordered and Seller has agreed to sell to Buyer, and Seller will deliver the aforesaid Products to Buyer; and (b) Buyer must return all Confidential Information and all documents and materials containing any Confidential Information to Seller.
- 12.3 Termination of any Contract is without prejudice to and does not affect the accrued rights or remedies of any party thereto arising in any way out of such Contract up to the date of termination.

13 **General**

- 13.1 Governing law and jurisdiction. These Terms and the Contracts shall be governed by and construed in accordance with the laws of Singapore. The applicability of the 1980 Vienna Convention on the International Sale of Goods is excluded. Seller and Buyer each irrevocably agrees that the courts of the Republic of Singapore shall have exclusive jurisdiction to hear, settle and/or determine any dispute, controversy or claim (including any non-contractual dispute, controversy or claim) arising out of or in connection with these Terms and any Contract, including any question regarding their existence, validity, formation or termination. For these purposes, Seller and Buyer each irrevocably submits to the jurisdiction of the courts of the Republic of Singapore.
- 13.2 Invalidity. A provision of, or the application of a provision of, these Terms which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction. If any provision in these Terms is or becomes invalid, unenforceable or illegal for any reason, the relevant provision shall be deemed to be modified to the extent necessary to remedy such invalidity, unenforceability or illegality, or if that is not possible, then such provision shall be severed from these Terms without affecting the remaining provisions of these Terms.
- 13.3 Independence. Each party is an independent contractor and not a manager, employee, partner or agent of the other party. Nothing in these Terms or any Contract will create, constitute or evidence any partnership, joint venture, agency, fiduciary obligation, trust or employer-employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. Unless agreed elsewhere, a party has no power or authority to bind, act for, or to incur any obligation on behalf of the other party, impose any obligation on the other party for the benefit of any third party, or constitute the other party as its commercial agent.
- 13.4 Third Party Rights. An entity or person who is not a party shall not have any rights under the Contracts (Rights of Third Parties) Act (Cap. 53B) or any other applicable legislation to enforce any of the provisions of these Terms or any Contract.
- 13.5 No Waiver. The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right or prevent the subsequent enforcement of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. No waiver by a party of any power or right under these Terms or any Contract will be effective unless it is in writing and signed by that party.
- 13.6 Prevalence. No term or condition contained in any request for quotation, purchase order, acknowledgement or other form of writing issued by Buyer (whether printed, typed or handwritten) shall apply to any sale of Products hereunder unless accepted in writing by an officer of Seller.

Updated 26 Jan 2022