



**GENERAL CONDITIONS OF PURCHASE OF  
MISITANO & STRACUZZI S.P.A.  
AND ITS AFFILIATES**

**1. Definitions**

In these Conditions of Purchase “the Buyer” means MISITANO & STRACUZZI S.P.A. and/or any affiliates, “the Seller” means the person, firm or company who supplies the Goods or Services to the Buyer, “the Goods” means any products or materials including their packaging, which shall be supplied to the Buyer, “the Services” means any service provided to the Buyer and “the Incoterms” means the latest revision available of the International Commercial Terms.

**2. General**

**2.1** Each purchase order of the Buyer (the “Order”) placed with the Seller in pursuance of a quotation or otherwise shall constitute an offer by the Buyer to purchase Goods or Services subject to these conditions and any Special Conditions contained in or endorsed upon the Buyer’s Order and shall be deemed to be accepted by the Seller, in respect of this and future purchases from the Buyer, either expressly by giving notice of acceptance or implied by fulfilling the Order or Services, in whole or in part.

**2.2** All Goods or Services are purchased or agreed to be purchased by the Buyer subject to these Conditions of Purchase and any Special Conditions stated in the Buyer’s Order, which shall apply in preference to and supersede any terms and conditions referred to, offered or relied upon by the Seller whether in negotiation or at any stage in the dealings between the Buyer and Seller and no terms endorsed upon, delivered with or contained in the Seller’s confirmation of order or other document nor any other variation of

these terms shall form part of a contract unless expressly agreed in writing by the Buyer.

**2.3** The Buyer shall be entitled to cancel any Order for Goods or Services which has not been unconditionally accepted by the Seller within 2 (two) days of the Order.

**2.4** If the Order has been made as a “contract on call”, the due date is to be considered as the deadline for sending a call-off (orders from contract).

**3. Price**

**3.1** The price for the Goods or Services shall be that stated in the Order and unless otherwise stated or agreed in writing shall be inclusive of all charges, including but not limited to packing, shipping, insurance and delivery of the Goods to the delivery address, all labour and material costs of Services performed and any duties, levies or taxes other than value added tax.

**3.2** No variation in the price nor additional charges can be made on any grounds whatsoever by the Seller without the prior written consent of the Buyer.

**4. Delivery of Goods and Performance of Services**

**4.1** The Goods shall be delivered or the Services performed on the date or within the period specified in the Order, or if no such period is specified within 28 (twenty-eight) days of the Order.

**4.2** The Goods shall be delivered or collected in accordance with the Incoterm 2020 or the delivery instructions stated by the Buyer in the Order. In the absence of instructions, CIF Incoterm 2020 will apply.

**4.3** The Seller shall ensure that each delivery of Goods is accompanied by a delivery note which is prominently displayed and which shows, inter alia, the order number, date of order, number of packages and



contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

**4.4** Time for delivery of Goods and the performance of Services shall be of the essence of the contract. If the Seller shall fail to make delivery or perform the Services within the time specified, the Buyer shall be entitled to cancel the Order and the Seller shall be liable for all costs incurred by the Buyer as a result of the breach of this condition.

**4.5** The Buyer shall not be deemed to have accepted the Goods or Services until the Buyer has had 30 (thirty) days to inspect them following delivery or completion, or if later, within 30 (thirty) days after a latent defect in the Goods or Services has become apparent.

**4.6** Unless the Buyer agrees otherwise in writing, containers and packing must be supplied free.

**4.7** Where more than one item of Goods is involved in the Order and the Buyer agrees to accept delivery by instalments, the contract shall be construed as a separate contract in respect of each instalment. Nevertheless, failure to deliver any instalment shall entitle the Buyer at its option to treat the contract as repudiated.

**4.8** If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

**4.9** The Goods shall be properly packed, clearly labelled, safety instructions and warning notices clearly displayed and adequately protected against damage and deterioration in transit. Packaging of goods shall comply with Buyer's instructions, if any, and be labelled visibly with the following indications: product name, production date, batch number, net weight, gross weight and tare, and other indications mentioned on the Order, if any. Packaging and labelling must also comply with the applicable regulations. Buyer is

entitled to reject goods if the packaging, labelling or delivery documents do not comply with the above, are damaged or contaminated, without prejudice to its right to damages.

**4.10** Unless agreed otherwise the Sellers shall have obtained all necessary export licenses and/or permits or permissions and shall have complied with all applicable regulations and formalities in respect of the sale of the Goods to the Buyer.

**4.11** The Seller will repair or replace Goods damaged or lost in transit or during off-loading or stacking by the Seller free of charge provided the Buyer gives written notice to the Seller of the damage or loss within a reasonable time after receipt of a dispatch note.

## **5. Payment**

**5.1** The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, save where the Buyer requests the invoice prior to delivery to facilitate customs clearance in respect of the delivery of Goods, and each invoice shall quote the number of the Order. The Seller shall render a separate invoice in respect of each consignment of Goods delivered under the Order.

**5.2** Unless otherwise stated in the Order, the Buyer shall pay the price of the Goods or Services by the last day of the month following the month of receipt by the Buyer of a proper invoice. Default interest will be 5% on an annual basis. Time for payment shall not be of the essence.

**5.3** Payment of an invoice shall be made by the Buyer to the bank account nominated in writing by the Seller. The Seller shall bear the risk of the integrity of its email system and the Buyer shall not be liable for any loss resulting from payment in reliance of a fraudulent email providing payment instructions, received from the Seller's email account.



**5.4** Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller or affiliates of the Seller to the Buyer against any sum payable by the Buyer to the Seller or affiliates of the Seller under the contract.

## **6. Ownership and Risk**

**6.1** Risk in the Goods shall pass to the Buyer in accordance with the Incoterm stated by the Buyer in the Order. In the event that an Incoterm is not stated risk shall pass to the Buyer at the point of delivery in accordance with the delivery instructions stated by the Buyer in the Order.

**6.2** If Buyer has a claim against Seller relating to this Order, Buyer may deduct or set off disputed amounts from any amounts Buyer owes Seller.

**6.3** Title to the Goods shall pass to the Buyer upon delivery.

## **7. Specification**

**7.1** The Seller acknowledges that precise conformity of the Goods or Services with the specification is of the essence of the contract and the Buyer shall be entitled to reject the Goods or Services if they are not in conformance, no matter of the nature or gravity of the breach. Odor and taste profiles shall be suitable for use by the Buyer and shall be consistent with Goods previously accepted by the Buyer unless agreed otherwise. Goods sold as suitable for flavor use shall be safe for use in food and beverage and shall not contain any toxic components, at any level whatsoever regardless of the Goods being within the overall purity parameters of the specification. The Seller acknowledges that the Buyer will rely on the accuracy of the Seller's certificate of analysis as evidence that the Goods meet specification and the Seller shall indemnify the Buyer against all losses, costs or expenses incurred

by the Buyer as a result of any error or omission on the Seller's certificate of analysis.

**7.2** The quantity, quality and description of the Goods and Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable specification supplied or advised by the Buyer to the Seller.

**7.3** Without prejudice to any other specification of the Buyer, the Seller warrants and agrees that it shall comply with good manufacturing practice and all applicable standards, regulations and/or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods, without limitation, and shall ensure that all Services are carried out in a safe manner and strictly in accordance with all laws and regulations specifically in relation to health and safety, to the nature of the Services being performed and any and all industry standards.

**7.4** The Seller shall ensure that wooden pallets used in the packaging and delivery of the Goods are CP9 pallets or pallets that otherwise conform to ISPM15 and are not treated with Methyl Bromide.

**7.5** The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition in the ordinary course.

**7.6** The Buyer may at any time make changes in writing relating to the contract including changes in the specification, method of shipment, quantities, packing or time or place of delivery. If such changes result in an increasing cost of, or time required for, the performance of the contract an equitable adjustment shall be made to the price, delivery schedule or both. Any claim or adjustment by the Seller must be approved by the Buyer in writing before the Seller proceeds with such changes.



**7.7** The Goods shall be fit and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Seller by the Buyer and the Buyer relies on the skill and judgement of the Seller in the supply of the Goods and the execution of the Order. Goods which conform to specification but are contaminated with a substance (however slight) that has an effect on the Goods, including but not limited to, its taste, odor and appearance shall, at the sole discretion of the Buyer, be deemed not fit for purpose and the Seller shall indemnify the Buyer against all direct and indirect losses, costs and expenses incurred by the Buyer as a result of a breach hereof.

**7.8** The Services shall be performed by appropriately qualified and trained personnel in a professional manner and to the reasonable satisfaction of the Buyer.

## **8. Anti-Corruption**

**8.1** The Seller warrants and undertakes that it will comply without limitation, to all applicable laws, foreign trade controls and regulations and codes relating to anti-bribery and anti-corruption and that it has in place appropriate policies and procedures in order to ensure compliance with the relevant legislation by its directors, officers, employees and all those acting on its behalf in relation to the contract.

**8.2** The Seller affirms that it has not and will not offer, promise, give, request or accept gifts, hospitality, payment or any other advantage whatsoever, financial or otherwise, with the intention of inducing or rewarding improper conduct, which would constitute an offence under anti-bribery and corruption legislation.

**8.3** The Seller agrees to notify the Buyer as a matter of urgency of any demand for financial or other advantage of any kind received by it in connection with the Contract.

**8.4** The Seller acknowledges and accepts that breach of this warranty shall amount to a material breach of contract which shall entitle the Buyer to terminate the contract immediately and recover its losses from the Seller.

## **9. Conditions**

**9.1** It is a condition of the contract that the Goods and the packaging in which they are supplied:

- i) shall be of satisfactory quality, merchantable and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
- ii) shall be free from defects and comply with clause 7 of these conditions;
- iii) shall not breach any third-party intellectual property rights; and
- iv) shall comply with all applicable laws, regulations and standards relating to the Goods and packaging and their sale and supply.

**9.2** It is a condition of the contract that the Services:

- i) shall be carried out with reasonable care and skill;
- ii) shall be free from defects and comply with clause 7 of these conditions;
- iii) shall not breach any third-party intellectual property rights; and
- iv) shall comply with all applicable laws, regulations and standards relating to the performance of the Services.

**9.3** The Buyer shall be entitled to reject the Goods at the Seller's risk and expense or request that the Seller shall at its own expense reschedule and perform the Services correctly within such reasonable time as may be specified where the Goods and Services do not comply with these conditions.

**9.4** The Buyer may, at its option, require the Seller to repair or replace any or all of the rejected Goods and Services at the Seller's expense.

**9.5** The Seller shall indemnify the Buyer from all costs, losses, damages and expenses whatsoever incurred by



the Buyer due to a defect in the Goods or Services or rejection thereof and/or any additional expenditure reasonably incurred by the Buyer in obtaining other goods to replace the rejected Goods or corrective action in respect of the Services.

## 10. Inspection of Goods and Services

**10.1** The Buyer shall have the right, at any time before shipment or delivery, to inspect the Goods or to request representative samples to be drawn and supplied to them for inspection and testing in order to ensure that the Goods comply with the conditions in clause 9.

**10.2** The Buyer shall have 30 (thirty) days from delivery of the Goods or performance of the Services, or from the discovery of a latent defect, to notify the Seller that the Goods or Services do not comply with the conditions in clause 9.

## 11. Indemnity

**11.1** The Seller shall indemnify and keep indemnified the Buyer in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

- i) breach of any condition or warranty given by the Seller in relation to the Goods and packaging and the Services;
- ii) any claim made against the Buyer in respect of any liability, loss, damage, cost or expense sustained by the Buyer's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods or Services; or
- iii) any act or omission of the Seller or its employees, agents or sub-contractors in supplying and delivering the Goods or Services in accordance with the contract;

iv) any misleading or inaccurate information or data supplied at any time by the Seller its servants or agents;

v) any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or Services or the negligent or wrongful act or omission of the Seller.

**11.2** The Seller warrants to the Buyer that it will obtain and maintain, at its own expense, public and product liability insurance with an insurer of repute which covers, without limitation, all Goods and Services supplied to the Buyer in an amount no less than \$/€ 5,000,000. A Certificate of Insurance evidencing this cover must be supplied to the Buyer upon request.

## 12. Force Majeure

**12.1** The Buyer reserves the right to defer the date of delivery or payment or to cancel the contract or reduce the volume of the Goods ordered or the scope of the Services to be performed if it is prevented from or delayed in the carrying on of its business through any circumstances beyond its reasonable control including but not limited to Acts of God, Pandemic, Epidemic, War, Strikes, Lock-outs and Flood.

**12.2** If the Seller is prevented from carrying out its obligations to the Buyer as a result of a Force Majeure event, as described in 12.1 and such event continues for more than 14 (fourteen) days, the Buyer shall be entitled to cancel the Order for Goods or Services by notice in writing and in that event neither party shall have any further liability under the Order except in respect of any rights accrued before such termination.

## 13. Termination

**13.1** The Buyer shall be entitled to cancel any Order in whole or in part by giving notice to the Seller at any time prior to delivery of the Goods or performance of the Services in which event the Buyer's sole liability shall be to pay to the Seller fair and reasonable



compensation for work-in-progress at the time of cancellation. In no event, shall the Buyer be liable for any special, incidental, punitive, indirect or consequential loss or damages, or any lost profits, lost revenues, or loss of business reputation (in each case regardless of whether categorized as direct or consequential losses or damages) incurred by the Seller or any third party, regardless of whether the Buyer has been advised of the possibility of such damages, and regardless of whether arising in tort (including negligence), contract, or other legal theory.

**13.2** The Buyer shall have the right at any time by giving notice in writing to the Seller to terminate the contract immediately without further liability if:

- i) the Seller commits a breach of any of the terms and conditions of the contract;
- ii) any distress, execution or other legal process is levied upon any of the assets of the Seller;
- iii) the Seller enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purpose of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, the Seller's undertaking or assets;
- iv) the Seller ceases or threatens to cease to carry on its business;
- v) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller;
- vi) there is any breach of these Conditions by the Seller.

**13.3** The termination of the contract, however arising, will be without prejudice to the rights and duties of either party accrued prior to termination. The Conditions which expressly or impliedly have effect

after termination will continue to be enforceable notwithstanding termination.

#### **14. Confidentiality**

**14.1** The details of the contract, and any information disclosed by the Buyer in the course of the contract or of which the Seller becomes aware during performance, including but not limited to customer information, technical and product information, processes, technical development, data and ideas, is confidential and the Seller shall not, without the prior written consent of the Buyer, disclose any information relative to or derived under the contract except as required to ensure performance. The Seller shall not advertise or publish the nature of its relationship with the Buyer.

**14.2** The Company shall be responsible for a breach of the above clause by any of its directors, officers or employees and shall be liable for all loss of the Buyer resulting from such breach.

#### **15. Intellectual Property Rights**

**15.1** All intellectual property rights produced or arising from the Seller's compliance with the Buyer's specific requirements regarding design or specification for the Goods shall become the absolute property of the Buyer, and the Seller shall do all that is reasonably necessary to ensure that such rights vest in the Buyer by the execution of appropriate instruments or the making of agreements with third parties.

**15.2** The Buyer will indemnify the Seller against all liabilities for infringement of third-party intellectual property rights arising from the Seller's compliance with the Buyer's specific requirements regarding design or specification for the Goods.



## 16. Responsible Sourcing

The Seller shall comply with the provisions of MISITANO & STRACUZZI's Responsible Sourcing Policy and Supplier Code of Conduct, published on its website and any subsequent versions thereof. The Supplier acknowledges and accepts that it is the responsibility of the Supplier to familiarize itself with the current version of the Responsible Sourcing Policy and Supplier Code of Conduct and to take appropriate steps to ensure compliance by its organization.

## 17. Miscellaneous

**17.1** The Seller shall not be entitled to assign any of its rights under any contract. The Buyer shall be entitled to sub-contract any of its obligations and to assign any of its rights under any contract but shall remain liable for its performance.

**17.2** Failure by the Buyer to enforce any provision of these conditions shall not be treated as a waiver of that or any other provision, nor shall it affect the right of that party subsequently to enforce any provision of these conditions.

**17.3** If any provision of this Agreement shall be declared invalid, unenforceable or illegal, such invalidity, unenforceability or invalidity shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of the Agreement.

**17.4** All contracts shall be governed by and construed in accordance with the laws of the jurisdiction of the Buyer that issued the Order, without giving effect to principles of conflict of laws and subject to the limitations of liability set forth above. Seller irrevocably submits to such jurisdiction and waives any objection to it, for inconvenience of forum or otherwise. Any suit, action or proceeding which may be commenced by any of the parties shall be commenced exclusively in the Court of Buyer's place of business which issued the Order, without limiting any right of action and without

prejudice to Buyer's right to refer the matter to any other competent Court.

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