

GENERAL TERMS AND CONDITIONS OF TEKNOR APEX B.V.

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, unless the context otherwise requires:

"**Agreement**" means the agreement of the sale and purchase of the Goods arising out of TEKNOR APEX's acceptance of an Order;

"**Buyer**" means the person, firm or company whose Order for the Goods is accepted by TEKNOR APEX;

"**Conditions**" means these conditions of sale;

"**Goods**" means the goods (including any instalment thereof) to be delivered by or on behalf of TEKNOR APEX;

"**Incoterms**" means the International Commercial Terms published by the International Chamber of Commerce as in force at the date when any Agreement is made;

"**Order**" means an order placed with TEKNOR APEX for the purchase of the Goods;

"**Relevant Laws**" means all laws, statutes, statutory provisions, rules, guidelines or regulations in force at any relevant time; and

"**TEKNOR APEX**" means Teknor Apex B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*), with its registered seat in Geleen, the Netherlands and its place of business at (6167 AC) Geleen, the Netherlands, Mijnweg 1, registered with the trade register of the Dutch Chamber of Commerce for Limburg under number 14039046.

1.2 In these Conditions the singular includes the plural and vice versa and any gender includes any other gender.

1.3 Headings in these Conditions are for ease of reference only and will not affect interpretation.

2. BASIS OF THE SALE

2.1 These Conditions govern the offering, sale and delivery of Goods from or on behalf of TEKNOR APEX to the Buyer and are deemed to be incorporated into every Agreement.

2.2 These Conditions shall apply in preference to and override all other terms and conditions, express or implied, in any Order, correspondence or other communication from the Buyer. Failure of TEKNOR APEX to object to terms and conditions set by the Buyer shall in no event be construed as an acceptance of any terms and conditions of the Buyer. Neither TEKNOR APEX's commencement of performance nor TEKNOR APEX's delivery shall be deemed or constituted as acceptance of any of the Buyer's terms and conditions. If these Conditions differ from any terms and conditions of the Buyer, these Conditions and any subsequent communication or conduct by or on behalf of TEKNOR APEX, including, without limitation, confirmation of an Order and delivery of Goods, constitutes a counter-offer and not acceptance of such terms and conditions submitted by the Buyer.

2.3 These Conditions may only be varied or waived by a duly executed written agreement between TEKNOR APEX and the Buyer.

2.4 By contracting on the basis of these Conditions, the Buyer agrees to the applicability thereof in respect of future dealings, even if this is not expressly stated. TEKNOR APEX shall be entitled to update and/or amend these Conditions and by and as of the moment of notifying the Buyer of such update or amendment or by sending the Buyer the updated or amended Conditions, these revised Conditions shall apply to all dealings between TEKNOR APEX and the Buyer.

2.5 THE BUYER DECLARES THAT IT HAS ACCEPTED THESE CONDITIONS IN THE KNOWLEDGE THAT THE LIABILITY OF TEKNOR APEX IS LIMITED AND THAT THE CHARGES PAYABLE HAVE BEEN CALCULATED ACCORDINGLY.

3. QUOTATIONS, ORDERS AND SPECIFICATIONS

3.1 Quotations, made by TEKNOR APEX in whatever form, are not binding upon TEKNOR APEX and merely constitute an invitation to the Buyer to place an Order. Orders are not binding until accepted by TEKNOR APEX in writing. TEKNOR APEX is always entitled to refuse an Order without indication of its reasons.

3.2 Oral statements and agreements made by TEKNOR APEX's employees, officers, representatives and/or agents are not binding upon TEKNOR APEX unless and only to the extent that such oral statements are confirmed or made in writing by duly authorized representative(s) of TEKNOR APEX.

3.3 An Order must set out the description of the Goods, the quantity being ordered, any changes required by the Buyer to TEKNOR APEX's product data sheets (which must be agreed by TEKNOR APEX in accordance with Clause 3.4), the delivery address, any special delivery instructions, Buyers Order number and such other information as TEKNOR APEX may reasonably require to perform the Agreement. The Buyer is responsible for ensuring the accuracy of any Order.

3.4 Subject to Clause 3.5, the properties of the Goods shall be as shown on TEKNOR APEX's typical product data sheets (which are normally based on internationally recognised tests or TEKNOR APEX's tests), which may not be appropriate for or reflect the Buyer's intended application or usage of the Goods. It is the Buyer's sole responsibility to ensure that the Goods are appropriate for the Buyer's application and/or usage (including carrying out its own tests for this purpose). Any changes to TEKNOR APEX's typical product data sheets must be agreed in writing by TEKNOR APEX.

3.5 TEKNOR APEX reserves the right, without prior notice, to make any changes in the properties of the Goods which are required to confirm with any Relevant Laws or which do not materially affect the quality or performance of the Goods.

3.6 If the Goods are to be manufactured or any process is to be applied to the Goods or any packaging is to be given to the Goods by TEKNOR APEX in accordance with any specification/product data sheets or amendments to product data sheets, materials, packaging or designs submitted by or requested by the Buyer, then the Buyer by entering into an Agreement licenses TEKNOR APEX to use such specification/product data sheets or amendments to product data sheets, materials, packaging and designs for the purpose of manufacturing and selling the Goods. The Buyer will indemnify and keep indemnified TEKNOR APEX against all loss, liability, damages, costs and expenses incurred by TEKNOR APEX or agreed to be paid by TEKNOR APEX in settlement of any claim for royalties or infringement of any industrial or intellectual property rights or other rights of any other person which (directly or

indirectly) results from such use.

4. CANCELLATION BY THE BUYER

The Buyer may only cancel an Agreement prior to delivery of the Goods with the agreement in writing of TEKNOR APEX and on terms that the Buyer indemnifies TEKNOR APEX in full against all loss (including loss of profits), liability, charges, damages, costs and expenses incurred by TEKNOR APEX as a result of such cancellation.

5. PRICES

5.1 Subject to Clause 5.2, the price of the Goods will be the price agreed with the Buyer at the time of acceptance of the Order in accordance with Clause 3.1. Subject to Clause 5.2, where prices are quoted by TEKNOR APEX they are valid for 30 days only unless expressly stated otherwise or until earlier acceptance by TEKNOR APEX of an Order based on such prices, after which time they may be altered by TEKNOR APEX without giving notice to the Buyer.

5.2 TEKNOR APEX reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost for TEKNOR APEX which is due to any factor beyond the reasonable control of TEKNOR APEX, including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour or raw materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods requested by the Buyer or any delay in the manufacture or despatch of the Goods which is requested by the Buyer or failure of the Buyer to give TEKNOR APEX adequate information or instructions.

5.3 Unless otherwise advised by TEKNOR APEX, all prices are inclusive of charges for transport and packaging but exclusive of any applicable 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, which the Buyer shall be additionally liable to pay.

5.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods where such cost is not included in the agreed price.

6. PAYMENT

6.1 The Buyer will pay the price of the Goods in full without deduction of any actual or alleged set-off or counter-claim within thirty (30) days of the date of invoice or within such other timeframe as is agreed with the Buyer. The time of payment will be of the essence of the Agreement.

6.2 If the Buyer fails to pay any sum due to TEKNOR APEX on the due date, the Buyer will be automatically in default and, without prejudice to any other rights, TEKNOR APEX will be entitled to:

6.2.1 charge interest on any overdue payment at the higher rate of either twelve percent (12%) per annum or one and a half (1.5) times the Dutch statutory commercial interest (*wettelijke handelsrente*) within the meaning of article 6:119a of the Dutch Civil Code from the due date computed on a daily basis until all amounts outstanding are paid in full, whereby all costs and expenses incurred by TEKNOR APEX with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for the Buyer's account;

6.2.2 suspend or terminate any Agreement with the Buyer or suspend any further deliveries to the Buyer; and

6.2.3 appropriate any payment made by the Buyer to such of the Goods (or other Goods delivered under any Agreement) as TEKNOR APEX may think fit.

7. DELIVERY

7.1 Unless otherwise agreed by TEKNOR APEX, TEKNOR APEX will deliver the Goods to the delivery address shown on the Order or otherwise expressly provided to TEKNOR APEX by the Buyer.

7.2 TEKNOR APEX will use all reasonable endeavours to ensure that delivery dates are agreed with the Buyer and met but time for delivery will not be of the essence of the Agreement and TEKNOR APEX will not be liable for any direct or indirect loss or damage suffered by the Buyer as a result of any failure in delivery dates being met nor shall any delay in delivery be a basis for cancellation of any Agreement. The Goods may be delivered by TEKNOR APEX in advance of the delivery date upon giving reasonable notice to the Buyer.

7.3 The Buyer shall take delivery of the Goods notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased, provided that:

7.3.1 such discrepancy in quantity shall not exceed ten percent (10%); and

7.3.2 the price paid under Clause 5 shall be adjusted pro rata to the discrepancy.

7.4 If the Buyer fails to give TEKNOR APEX adequate delivery instructions or fails to take delivery of the Goods notwithstanding any previous notification by TEKNOR APEX, TEKNOR APEX will be entitled to:

7.4.1 store the Goods until actual delivery and render an invoice to the Buyer for the full amount of the price plus any additional expenses incurred by TEKNOR APEX in handling and storing the Goods; or

7.4.2 mitigate its loss by selling or disposing of the Goods (where possible) and recovering any shortfall in the sale price (agreed with the Buyer) from the Buyer.

7.5 Where TEKNOR APEX delivers the Goods then, unless otherwise advised in delivery documentation, all claims for damage or partial loss of Goods in transit must be submitted in writing to both the carrier and TEKNOR APEX within seven (7) days of delivery and in the case of non-delivery of the whole consignment claims must be submitted in writing to both the carrier and TEKNOR APEX within seven (7) days of the expected delivery date. In the absence of claims within this time limit the Goods shall be deemed to have been properly delivered.

The Buyer is responsible for providing adequate labour and facilities at the delivery points for unloading the Goods ordered by the Buyer and shall keep TEKNOR APEX indemnified against all claims however arising from such unloading operations.

8. RISK AND TITLE TO GOODS

8.1 Risk of damage to or loss of any Goods or part or instalment of the Goods will pass to the Buyer:

8.1.1 if delivery is arranged by TEKNOR APEX under Clause 7.1, upon the relevant item(s) being delivered at the delivery address shown on the Order or notified to TEKNOR APEX or, in the event that the Buyer fails to take delivery at such address, at the time delivery is tendered by TEKNOR APEX at such address; or

8.1.2 if the Buyer is to collect the Goods, upon the relevant item(s) leaving TEKNOR APEX's premises or, in the event that such items are not collected by the Buyer or the Buyer's carrier on the agreed delivery date, at the time delivery is tendered by TEKNOR APEX.

8.2 The Buyer will be responsible for insuring the Goods against all commercial risks (including damage by fire and water) to their full value from the time risk passes to the Buyer.

8.3 Notwithstanding delivery and passing of risk, title to any Goods will not pass to the Buyer and will remain vested in TEKNOR APEX until payment in full and in cleared funds of all sums payable by the Buyer to TEKNOR APEX under the Agreement and all other sums then due and payable by the Buyer to TEKNOR APEX.

8.4 Until title to the Goods passes to the Buyer, the Buyer will be entitled to resell or use the Goods in the ordinary course of its business. Until that time or the time at which the Goods are incorporated with other goods so as to lose their identity or resold, the Buyer will hold the goods separate from those of the Buyer and properly stored, protected, insured and identified as TEKNOR APEX's property.

8.5 Until such time as title in the Goods passes, and provided that the Goods have not been resold or incorporated with other goods so as to lose their identity TEKNOR APEX reserves the right to require the Buyer to deliver up the Goods and, if the Buyer fails to do so, TEKNOR APEX or its agents shall have the right to enter any premises where it reasonably believes any item of the Goods to be located, for the purpose of recovering and taking possession of the Goods.

9 BUYER OBLIGATIONS

9.1 The Buyer undertakes at all times to comply in the storage, use and sale of the Goods with Relevant Laws and recommended health and safety guidelines in force at any time and with any requirements of TEKNOR APEX from time to time and not to sell or use any Goods after the end of the usable life of the Goods.

9.2 The Buyer acknowledges that irrespective of whether the Buyer's packaging or labels are to be applied to the Goods that TEKNOR APEX reserves the right to apply its own identification/coding to Goods in such a way as to ensure full traceability. The Buyer undertakes to maintain a system and complete records for tracing the Goods, which it purchases from TEKNOR APEX and shall make them available to TEKNOR APEX, upon reasonable request, to enable TEKNOR APEX to investigate any claim in respect of the Goods.

10 WARRANTIES AND LIMITATION OF LIABILITY

10.1 Subject to Clauses 10.2 and 10.3 below, the Goods delivered by TEKNOR APEX are warranted as being of satisfactory quality on delivery. Due to the nature of the Goods and the fact that they may be incorporated with other goods or have other processes applied to them by the Buyer or may be subject to conditions which TEKNOR APEX cannot reflect in its own laboratory, TEKNOR APEX cannot include further express warranties in these Conditions. In particular, TEKNOR APEX cannot warrant the Goods as being fit for a particular purpose.

10.2 TEKNOR APEX will not accept any claim in respect of a breach of warranty under sub-Clause 10.1 unless:

10.2.1 the Buyer has notified TEKNOR APEX of any alleged defect in the quality or condition of the Goods in writing immediately upon delivery or, where the defect was not apparent on reasonable inspection, within seven (7) days of it becoming apparent, but in no event later than six (6) months from the date of delivery of the Goods; and

10.2.2 the Buyer has provided sufficient detail of the alleged defect and the relevant Goods and, if requested by TEKNOR APEX, a sample of the defective Goods to enable TEKNOR APEX to investigate and deal with the matter fully.

10.3 TEKNOR APEX will be under no liability in respect of any defect in the Goods arising from any specification/product data sheets or amendments to TEKNOR APEX's typical product data sheets, packaging, designs or materials supplied by or requested by the Buyer or arising from any negligence of the Buyer, misuse or alteration of the Goods, abnormal storage conditions or failure to follow any instructions of TEKNOR APEX.

10.4 Where any valid claim is made in respect of any breach of the warranty in Clause 10.1 and notified to TEKNOR APEX in accordance with Clause 10.2 then, subject to Clauses 10.2 and 10.3, TEKNOR APEX will at its sole discretion and within a reasonable time after receiving such notice refund to the Buyer the amount paid for the defective Goods or part of the Goods. Where the Goods are delivered in bulk or by instalment(s), TEKNOR APEX will only be liable to refund the part of the bulk or instalment(s), which is defective.

10.5 LIMITATIONS

Save as expressly provided in these Conditions, all conditions, warranties and representations, express or implied by statute, law or otherwise in relation to the Goods and in relation to any delivery of Goods to be made by TEKNOR APEX are excluded to the fullest extent permitted by law.

10.6 TEKNOR APEX shall not be liable to the Buyer for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of TEKNOR APEX, its employees or agents or otherwise) which arise out of or in connection with the delivery of the Goods to the Buyer or their use or sale by the Buyer.

10.8 TEKNOR APEX will not be liable for any failure to perform or delay in performing any of its obligations in relation to the Goods if the failure or delay was due to any cause beyond TEKNOR APEX's reasonable control including, without limitation, difficulties in obtaining raw materials, labour, power failure or breakdown in machinery, Act of God, flood, fire or accident, strikes, lock-out or industrial action.

11 INDEMNITY

The Buyer shall indemnify and keep indemnified TEKNOR APEX against all claims,

liability, damage, loss, injury, costs or expenses arising directly or indirectly from the sale or use of the Goods by the Buyer or others.

12 EXPORT TERMS

12.1 Where Goods are delivered by TEKNOR APEX for export from the Netherlands, TEKNOR APEX will state the basis of the delivery by reference to terms defined in the Incoterms.

12.2 Subject to any terms which TEKNOR APEX may state as applying by reference to the Incoterms and subject to any special terms agreed in writing between the Buyer and TEKNOR APEX, the provisions of these Conditions shall apply to the sale of Goods by TEKNOR APEX for export.

12.3 The Buyer shall be responsible for complying with any Relevant Laws governing the importation of the Goods into any country and for the payment of any duties, taxes or levies on the Goods.

13 TERMINATION/CANCELLATION BY TEKNOR APEX

13.1 TEKNOR APEX shall be entitled to cancel an Order/terminate any Agreement immediately on notice in writing (irrespective of whether the Goods have been delivered) if:

13.1.1 the Buyer commits any material or persistent breach of any terms of the Agreement; or

13.1.2 the Buyer commits any minor breach which, if it is capable of remedy, it fails to remedy within 30 days of being required in writing to do so; or

13.1.3 if the Buyer ceases to trade, disposes of the whole or a substantial part of its assets, makes or proposes to make any voluntary arrangement or composition with its creditors or any bankruptcy proceeding is instituted by or against the Buyer or the Buyer goes into liquidation or has a resolution passed for its winding up or becomes insolvent within the meaning of any system of law having jurisdiction over it; or

13.1.4 if the Buyer has a receiver or administrative receiver appointed over the whole or any part of its assets; or

13.1.5 if TEKNOR APEX reasonably apprehends that any of the events set out in Clause 13.1.3 or Clause 13.1.4 is about to occur in relation to the Buyer and notifies the Buyer accordingly.

13.2 TEKNOR APEX shall be entitled to cancel an Order/terminate any Agreement in giving reasonable notice if it is unable to fulfil the Order due to any circumstance beyond its reasonable control as referred to in Clause 10.8.

13.3 On termination, without prejudice to any other right or remedy available to TEKNOR APEX, TEKNOR APEX shall be entitled to:

13.3.1 cancel or suspend any further deliveries under any Agreement without any liability to the Buyer;

13.3.2 demand immediate payment of any Goods which have been delivered but not paid for notwithstanding any previous Agreement or arrangement to the contrary;

13.3.3 resell/repackage/use any Goods which were ordered by or made up for the Buyer or specifically ordered by TEKNOR APEX to meet the Buyer's ongoing orders.

13.4 Termination of the Agreement shall be without prejudice to the rights or obligations of the parties arising prior to termination.

14 GENERAL

14.1 Any notice to be given by the Buyer under Clauses 7.5 or 10.2 or any claim to be made by the Buyer must be in writing and sent to TEKNOR APEX to the address showing in the Order or such other address notified to the Buyer in writing by TEKNOR APEX, either by courier (with proof of delivery) or fax. Any other notice to be given under the Agreement must be in writing and sent to the recipient either by courier (with proof of delivery), fax, or prepaid registered mail (with return receipt requested) to the address showing in the Order or any other address notified in writing by the recipient from time to time and referring to the Agreement.

14.2 TEKNOR APEX is entitled to assign its rights and obligations under the Agreement or to sub-contract the performance of its duties under the Agreement without the Buyer's consent. The rights granted to the Buyer under the Agreement are personal to the Buyer and may not be assigned without TEKNOR APEX's written consent.

14.3 These Conditions when read in conjunction with an Order contain the entire Agreement between TEKNOR APEX and the Buyer and no other terms or conditions, representations, promises or understandings form any part of that Agreement, unless expressly agreed otherwise between the parties.

14.4 The waiver or forbearance or failure of either party in insisting in any one or more instances on the performance of any provisions of the Agreement shall not be construed as a waiver or relinquishment of that party's rights in respect of any continued default or any future non performance of that or any other provision.

14.5 These Conditions and any Agreement to which they apply are governed by and shall be interpreted and construed in accordance with the laws of The Netherlands, excluding principles of conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

14.6 Any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the competent court in Maastricht, The Netherlands. If TEKNOR APEX is acting as the claiming party, TEKNOR APEX may, at its discretion, initiate proceedings in a court that has jurisdiction other than under this provision. Subject to Clauses 10.2 and 10.3, claims in respect of a breach of warranty under Clause 10.1 expire if proceedings are not commenced in the competent court within one year of discovery thereof.

14.7 If any terms of these Conditions or any Agreement to which they apply are held to be illegal or unenforceable, in whole or in part, under any Relevant Law, such terms shall to that extent be deemed not to form part of the Agreement but the enforceability of the remainder of the Agreement shall not be affected. Any term held to be illegal or unenforceable shall be reformed to a term satisfying the legal and economic intent of the original term to the maximum extent permitted by law.

THESE CONDITIONS HAVE BEEN FILED AT THE TRADE REGISTER OF THE CHAMBER OF COMMERCE FOR LIMBURG. Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.