

GENERAL TERMS AND CONDITIONS OF SALE

1. Applicability. These General Terms and Conditions of Sale (“Terms”) apply to and are incorporated into that offer, quotation, confirmation, or agreement (“Agreement”) to which they are attached. If there is a discrepancy between the Agreement and these Terms, then the Agreement prevails. These Terms prevail over any of yours (“Buyer”) general terms and conditions. For clarification purposes, if any terms or conditions submitted by the Buyer to Umicore Marketing Services Lusitana-Metais, Lda. (“UMS LM”), which are inconsistent with, different than, or additional to these Terms, are hereby expressly rejected and shall not be binding on UMS LM. By entering into an agreement with UMS LM, the Buyer declares that has full knowledge of UMS LM’s Terms and agrees to their incorporation to the Agreement between the parties. UMS LM reserves the right to revise and amend these Terms at any time

2. Offers and Orders. All offers and quotations provided by UMS LM are subject to change at UMS LM’s absolute discretion and are non-binding. All orders provided by Buyer, even if submitted pursuant to an offer or quotation, will only be deemed accepted upon written confirmation by UMS LM.

3. Delivery and Acceptance. Unless otherwise set forth in the Agreement, all goods will be delivered FCA UMS LM’s works (Incoterms® 2010). Each such delivery constitutes a separate sale. All delivery times set forth in the Agreement are only non-binding estimates. Buyer may not reject goods or be entitled to a reduction in price simply because goods are delivered outside of such times, unless the delay in the delivery is of more than 7 business days. Buyer shall inspect all goods within five (5) business days of their receipt and provide UMS LM with written notice of acceptance or rejection. If Buyer fails to provide UMS LM with such notice, then goods will be deemed duly and successfully accepted by Buyer “AS IS.”

4. Price and Transfer of Title. Unless otherwise set forth in the Agreement, the price of goods excludes all taxes, duties, fees, and other charges, which are the responsibility of Buyer. Title to goods will transfer from UMS LM to Buyer only upon Buyer’s full, final, and complete payment for such goods. Until full payment of the goods, the ownership of the goods is not transferred to the Buyer. UMS LM shall reserve the ownership of the goods until full payment by the Buyer. This reservation of ownership (“*reserva de propriedade*”) does not affect the transfer of risk to Buyer upon delivery. Until full payment of the goods is received by UMS LM, Buyer shall ensure that goods: (i) remain under Buyer’s exclusive control; (ii) store the goods separately from all other goods held by Buyer; (iii) are clearly marked as belonging to UMS LM; (iv) are not incorporated into any other goods or transformed in any manner; and (v) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

5. Payment Terms. Unless otherwise set forth in the Agreement, Buyer shall pay for goods within thirty (30) days of the date of the applicable invoice. If Buyer’s creditworthiness changes, however, then UMS LM may demand: (i) advanced payment for goods; or (ii) other means of financial security, including a letter of credit. Buyer shall make all payments unconditionally and without any setoff (except in the cases set forth by law), recoupment, or counter-claim. All past-due amounts will incur interest at a rate of one percent (1%) per month. Buyer shall be responsible for all costs and expenses incurred by UMS LM as a result of pursuing past-due amounts.

6. Termination. Unless otherwise set forth therein, Buyer may not terminate the Agreement. If the Agreement may be terminated, then Buyer shall reimburse UMS LM for all costs and expenses incurred by UMS LM as a result of performing the Agreement prior to the date of termination. Such costs and expenses may include, without limitation, raw materials, labor, and production costs. UMS LM may terminate the Agreement in case the Buyer does not pay the full price of the goods, whether the goods are delivered to the Buyer or not.

7. Limited Warranty. UMS LM hereby warrants to Buyer that goods will, at the time of delivery and for the applicable legal warranty period, comply with the applicable specifications. UMS LM hereby disclaims all other warranties, whether express or implied. Buyer’s sole and exclusive remedy for any breach of the foregoing warranty is, at UMS LM’s option: (i) replacement of the non-conforming goods; or (ii) reimbursement of that portion of the purchase price attributable to the non-conforming goods. Buyer shall provide UMS LM with written notice of any latent or hidden defects within five (5) business days of Buyer’s discovery of such defects, within the warranty period. UMS LM’s obligation and the goods warranty is subject to full payment of the price of the allegedly defective product by the Buyer. The product warranty is the only warranty offered by UMS LM with respect to the goods. The warranty is not transferable to any third party.

8. Disclaimer of Damages and Limitation of Liability. To the maximum extent permitted by applicable law, UMS LM hereby disclaims and shall not be liable to Buyer for any consequential, incidental, or indirect damages, including, without limitation, lost profits or production down-time, as a result of the Agreement or these Terms, even if UMS LM has been informed of the possibility of such damages. UMS LM’s maximum liability under the Agreement and these Terms is limited to the aggregate value of goods sold to Buyer pursuant to the Agreement during the twelve (12) months immediately preceding the liability. Any liability limitation or exclusion shall not apply in case of serious misconduct and/or fraud by UMS LM.

9. Severability and Assignment. If any provision of the Agreement or these Terms is deemed by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be severed from the Agreement or these Terms, as applicable, and have no further impact on the remaining provisions. Buyer may not assign its rights or delegate any of its obligations under the Agreement or these Terms without the prior written consent of UMS LM.

10. Confidentiality. Buyer shall treat the Agreement and any confidential information provided by UMS LM as confidential and shall not disclose it, or its contents, to any third party without the prior written consent of UMS LM.

11. Setoff. UMS LM may, without prejudice to its other rights and remedies, setoff any liability that UMS LM owes to Buyer against any liability that Buyer owes to UMS LM, regardless of whether such liability is matured or liquidated.

UMS LM13. Force Majeure. UMS LM shall be excused from its obligations under the Agreement to the extent prevented by circumstances beyond its reasonable control, including, without limitation, fire, flood, natural disaster, change in applicable law, difficulty sourcing raw materials, acts of terrorism, war, equipment breakdown, strike, lockout, labor dispute, and interruption in utilities or transportation, delays in deliveries by suppliers or subcontractors claiming force majeure or other acts of God.

13. Compliance. Buyer shall handle, store, process, use, and transfer goods in compliance with all applicable: (i) safety information provided by UMS LM; and (ii) laws, rules, and regulations, including, without limitation, those regarding environmental health and safety. Buyer hereby represents to UMS LM that Buyer is a sophisticated consumer and possesses all requisite skill and expertise necessary to handle, store, process, use, and transfer the goods, which may contain toxic, hazardous, or otherwise dangerous substances.

14. Governing Law and Venue. The Agreement and these Terms are governed by the laws of Portugal. Any claim or controversy arising out of the Agreement or these Terms must be brought exclusively in a court of competent jurisdiction located in Lisbon, Portugal, with express waiver to any other. Buyer hereby waives any and all defenses that it may have regarding such venue. The U.N. Convention on Contracts for the International Sale of Goods (CISG) does not apply to the Agreement or these Terms.