

TERMS AND CONDITIONS OF SALE

1. PARTIES / OBJECT

The terms and conditions of sale set forth herein are agreed between Artlant Sines PTA, S.A., with registered office at Zona Industrial Logística de Sines Zona 2 – Lote 2 E1, Monte Feio, 7520-064 Sines, Portugal, registered with the Civil / Land / Commercial Registry Office of Sines under the Portuguese corporate number 507 865 448 (“SELLER”) and any person or legal entity acquiring Purified Terephthalic Acid (“PRODUCT”) from SELLER (“BUYER”).

2. ACCEPTANCE

All communications made by SELLER are invitations to treat only. Prices and availability of materials are subject to change. Purchase orders received from BUYER shall not be binding on SELLER until formal acceptance is sent by SELLER to BUYER. SELLER’s acceptance of BUYER’s order is expressly made conditional on BUYER’s assent to the terms and conditions set forth herein, notwithstanding the provisions contained in any purchase order, acknowledgement, acceptance or other document of BUYER. Each delivery of the PRODUCT by SELLER will be deemed to be solely upon the terms and conditions of this document; provided, however, that any conflicting provisions of a separate written contract or a written amendment to this document signed by an authorized representative of SELLER will control.

3. PRICE AND PRICE CONTROLS

- a. Unless otherwise expressly stated, the price of the PRODUCT will be SELLER’s current price in effect as of the time of shipment and issuing of the correspondent invoice.
- b. In the event any law, regulation or order prohibits SELLER, in its opinion, from collecting from BUYER a price for the PRODUCT herein provided, SELLER may, without liability to BUYER, cancel BUYER’s order as to future shipments by giving BUYER written notice of cancellation.
- c. Any tax, excise or other governmental charge imposed upon the production, sale or transportation of any PRODUCT sold hereunder which SELLER may be required to pay will be paid by BUYER to SELLER in addition to the purchase price.

4. PAYMENT

Payment shall be made in the currency and on the bank account designated on the invoice. If no payment terms have been quoted to BUYER, payment will be due in full net thirty (30) days from the invoice date. Any credit SELLER may elect to extend to BUYER will be upon SELLER’s credit terms in effect at the time of delivery. BUYER shall have no right to make deductions or setoff (including those for alleged damages) from payments due hereunder, if any. If BUYER fails to remit the full amount payable by it when due, SELLER reserves the right to impose interest from the date due until the date of payment on the unpaid portion at a rate of one percent (1%) per month without a formal default notice being required. Furthermore, SELLER shall be entitled to recover from BUYER an additional one percent (1%) of the outstanding invoices (with a minimum of EUR 500) to cover administrative and legal expenses incurred as a result of the delayed payment.

5. DELIVERY OF THE PRODUCT

The delivery of the PRODUCT shall be ruled by the Incoterm herein agreed upon between the Parties. Unless otherwise expressly stated, the applicable Incoterm refers to Incoterms 2010. If no Incoterm is specified, PRODUCT shall be delivered on an CFR (place of destination) basis. Risk of loss to the PRODUCT will pass to BUYER upon delivery or shipment as defined in accordance with the applicable Incoterm. In the event SELLER undertakes to execute or to contract the transportation of the PRODUCT, SELLER reserves the right to route shipments. BUYER will promptly unload and release transportation equipment furnished or arranged for by SELLER. In the event BUYER fails to unload and release to the carriers any transportation equipment furnished or arranged by SELLER, BUYER agrees to pay any detention and/or demurrage charges in accordance with SELLER's or carrier's policy in effect at the time. SELLER's weight and/or measurements taken at the shipping point will control. SELLER reserves the right to ship, and BUYER agrees to accept and pay for quantity within 10% plus or minus of the quantity ordered. The delivery times made known to BUYER are estimates only. SELLER is not liable for any cost, loss or damage caused to BUYER or its customers as a result of the late delivery of the PRODUCT.

6. REACH REGISTRATION

To the extent required under the provisions of the European Regulation (EC) n° 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"), SELLER warrants that it will take all reasonable steps to ensure that the PRODUCT (or the substances contained therein) are or will be registered as stipulated under REACH for the uses identified in the safety data sheets. SELLER may, at its sole discretion, register for a new use identified by BUYER provided that (i) BUYER provides all the information on the use and exposure of the PRODUCT needed for SELLER to perform a realistic risk assessment of such use(s), (ii) the risk assessment so made demonstrates that the risks of such use(s), if any, can be adequately managed, and (iii) such use(s) represent sufficient economic interest for SELLER to justify registration and/or (iv) BUYER shall pay the costs associated with the specific coverage by SELLER of such use(s).

7. WARRANTIES AND DISCLAIMERS

SELLER warrants that, at the time of delivery, the PRODUCT will meet SELLER's specifications in all material respects. SELLER DOES NOT MAKE, AND BUYER EXPRESSLY WAIVES ANY OTHER WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDLESS OF WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OF ANY TRADE OR FROM ANY COURSE OF DEALING.

8. INSPECTION AND LIMITATION ON LIABILITY

a. BUYER will examine the PRODUCT promptly upon receipt of each shipment and notify SELLER of any off-specification PRODUCT, or shortfall in delivery. SELLER will not be responsible for any variation in quality or quantity unless BUYER gives SELLER written notice of a claim of such variation within thirty (30) days after acknowledgment of such variation but within a maximum of forty-five (45) days after the receipt of the shipment. BUYER's failure to give notice of any such claim will constitute an unqualified acceptance of the PRODUCT and a waiver by BUYER of all claims with respect thereto.

b. SELLER'S TOTAL LIABILITY TO BUYER ARISING FROM THIS ORDER FOR ANY AND ALL CLAIMS OF ANY NATURE WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, AND STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE PRODUCT IN RESPECT OF WHICH SUCH CLAIMS ARE MADE. THIS CONSTITUTES SELLER'S MAXIMUM LIABILITY EVEN IF THE PRODUCT HAVE BEEN MIXED WITH OTHER MATERIALS OR USED IN SPECIALIZED EQUIPMENT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR CONTINGENT DAMAGES INCURRED BY BUYER.

9. FINANCIAL RESPONSIBILITY

If BUYER becomes insolvent, even if such insolvency has not been declared by a court, or if by any reason due to BUYER promised guarantees are not granted or are subject to reduction, once granted, SELLER reserves the right, without liability and without prejudice to any other remedies under these Terms and Conditions or by operation of law or equity, to (i) require immediate payment of all amounts owing to SELLER, whether or not due; (ii) suspend performance, decline to ship, or stop any Product shipment in transit, until SELLER receives payment of all amounts owing to SELLER, whether or not due, in accordance with (i); and (iii) require BUYER to make payment on a C.I.A. basis or provide a satisfactory bank letter of credit securing payment until SELLER, in its sole reasonable judgment, determines that the financial responsibility of BUYER has returned to a level where SELLER no longer has reasonable doubt that BUYER will not be able to make payments coming due or the correspondent guarantees are granted or reestablished.

10. TECHNICAL INFORMATION

Any technical advice or assistance furnished by SELLER or SELLER'S AGENTS to BUYER with respect to the selection or use of the PRODUCT delivered to BUYER hereunder will be given and accepted at BUYER's sole risk, and SELLER or SELLER'S AGENTS will have no liability whatsoever for the use of, or results obtained from, such advice or assistance.

11. DUTY TO WARN AND INDEMNIFICATION

a. PRODUCT may be or become hazardous. BUYER acknowledges that it is familiar with, and will take all steps necessary to inform, warn, and familiarize its employees, agents, customers, and contractors who may handle the PRODUCT, of all hazards pertaining to and proper procedures for safe use of the PRODUCT and of the containers or equipment in which the PRODUCT may be handled, shipped, or stored. BUYER also undertakes to label as appropriate any materials which it makes or resells that include PRODUCT.

b. BUYER will indemnify and defend SELLER (including without limitation its parents, subsidiaries, affiliates, partners, co-ventures, and the respective directors, officers and employees of each) from and against any claim, liability or expense, including, but not limited to, injury or death of BUYER's employees, directly or indirectly arising from, connected with, or relating in any way to the PRODUCT sold (including without limitation possession, use, handling, storage, processing, disposal, resale and/or retransfer of the PRODUCT), except to the extent that the claim, liability or expense is caused by the failure of the PRODUCT to meet SELLER's specifications when delivered to BUYER. These undertakings apply in full whether or not it is alleged or proved that SELLER was concurrently, partially or jointly negligent or at fault or liability without fault is sought to be imposed on SELLER. Expense as used herein will include reasonable attorney's fees and court's costs.

c. BUYER undertakes to comply with all the applicable laws and regulations concerning the transport and handling of dangerous PRODUCT.

12. FORCE MAJEURE

a. SELLER and BUYER shall be released from any claim to the extent they are unable to perform any obligation under this order (other than the payment of money) due to Force Majeure. The affected Party must give the other prompt notice of the cause of its non-performance and the anticipated extent of delay, and use reasonable endeavors to overcome the Force Majeure and resume performance. There is no obligation to settle strikes, lockouts or other industrial disturbances. The Party invoking Force Majeure must give prompt notice to the other when it is able to resume performance.

b. "Force Majeure" means any causes beyond the reasonable control of the relevant Party and which could not have been avoided by the exercise of reasonable diligence, including, but not limited to: imposition of compliance with law, regulation, decree, order or request of any governmental authority, nationalization, expropriation, confiscation, riot, war, public disturbance, fire, flood, earthquake, storm, explosion, acts of God, strikes, lockouts, breakdown of machinery or facilities, or inability to obtain raw materials, equipment, fuel or transportation.

c. BUYER shall not be relieved of any obligation to accept and pay for Product dispatched before SELLER receives the BUYER's Force Majeure notice.

d. To the extent the PRODUCT is not available to SELLER by reason of Force Majeure, SELLER shall apportion available PRODUCT among itself and its purchasers (including BUYER) on an equitable and reasonable basis, without incurring any liability for failure to perform under this order. SELLER shall not be required to acquire, by purchase or other, additional quantities of the PRODUCT from other suppliers or from any of its affiliates (if applicable), or otherwise supplement its available supply of the PRODUCT.

e. If by reason of Force Majeure BUYER is unable to utilize the PRODUCT in the full quantities which BUYER has committed to purchase from SELLER and from BUYER's other suppliers of the PRODUCT, BUYER must apportion its remaining PRODUCT requirements among all of its contracted Product suppliers, including Artlant and its affiliates (if applicable), on an equitable and reasonable basis.

The Party not invoking Force Majeure may terminate this Agreement by notice if Force Majeure lasts over a continuous period of 180 days or more.

13. MISCELLANEOUS

a. These Terms and Conditions bind and benefit the parties as well as their respective successors and assigns. Neither party may assign any of its rights or obligations under these Terms and Conditions without the prior written consent of the other party, which consent will not be unreasonably withheld.

b. Neither party may give any director, employee, or representative of the other party any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this order or enter into any other business arrangement with any director, employee, or representative of the other, without prior written notification to the other party.

c. BUYER agrees that it shall comply with and abide by, all applicable laws, rules, regulations, orders and ordinances (now existing or that may be hereafter enacted or promulgated) and it will not export, re-export or otherwise transfer any PRODUCT supplied by SELLER, or any technical information disclosed to BUYER concerning the PRODUCT, in violation of such laws.

14. CONFIDENTIALITY

a. BUYER undertakes at all times to treat on a confidential basis (i) the information with respect to SELLER, to its activity, shareholders, directors, workers or any persons thereto connected, which has been obtained by virtue of the terms and conditions of sale set forth herein; (ii) any documents issued or exchanged between SELLER and BUYER; (iii) the existence and content of these terms and conditions of sale; and (iv) all past and future discussions and negotiations between SELLER and BUYER.

b. The obligation set forth in clause 14 a.) above extends to all members of staff, employees, officers, agents or consultants of BUYER, regardless of their actual relationship, being the BUYER responsible for compensating SELLER of any damages caused to SELLER, to its shareholders, directors, worker or any persons thereto connected.

c. Confidential information is subject to appropriate disclosure to a Court or regulatory authorities if and when and to the extent deemed necessary (i) as required by law or the rules of any securities exchange; or (ii) to the appropriate defense of a party rights or interest hereunder, which may be applicable; or (iii) if duly authorized in written by SELLER; or (iv) to the extent that the information has been made public (other than where such information becomes publicly known as a result of a breach of any obligation of confidentiality).

15. SEVERABILITY

Any provision of these terms and conditions that is held to be unenforceable or invalid in whole or in part shall be unenforceable or invalid to the extent that it does not affect the remaining provisions of these terms and conditions of sale.

16. WAIVER OF RIGHTS

SELLER and BUYER expressly acknowledge that, unless otherwise stated herein (i) no failure or delay on the part of any party in exercising any right herein shall operate as a waiver of, or impair any such right, and (ii) no single or partial exercise of such right shall preclude any other or further exercise thereof or the exercise of any other right.

17. NOTICES

Any notices or communications sent by BUYER to SELLER will only be valid and binding if sent to the address of the SELLER set out in clause 1. above and in fact received by it.

18. APPLICABLE LAW AND JURISDICTION

a. Any questions concerning the interpretation and enforcement of these terms and conditions or any order issued thereunder will be governed by the laws of Portugal without regard to the principles of the conflicts of laws.

b. Any disputes with regard to the present terms and conditions, the order, and the supply of materials and/or performance of services thereunder, shall be subject to the exclusive jurisdiction of the Courts of Lisbon.