

General Terms and Conditions of Sale

1. Scope

- a) These General Terms and Conditions of Sale govern and apply to all contracts, including but not limited to future contracts, with companies, individuals, legal entities of public law or special funds under public law or other purchaser ("Buyer" or "you") regarding the sale by Markert USA LP ("Seller", "we", "us" or "our") of moveable goods or moveable goods to be produced ("Delivery Good" or "Delivery Goods") to the Buyer.
- b) Buyer's general terms and conditions of purchase are hereby rejected. No other terms and conditions shall apply, even if we do not reject them upon receipt. Fulfillment of Buyer's order does not constitute our acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these General Terms and Conditions of Sale. These General Terms and Conditions of Sale shall be deemed agreed-upon at the earlier of our written order confirmation or delivery of the Delivery Goods, if we have indicated the applicability of our General Terms and Conditions of Sale, including through our order confirmation.

2. Offer and Conclusion

- a) Our offers and quotations are non-binding. A contract shall be concluded either by way of our written order confirmation, which we are free to accept within a time period of two weeks from the receipt of the Buyer's order, or by delivering the Delivery Goods, and shall only be interpreted on the basis of the content of the written order confirmation and/or this General Terms and Conditions of Sale. A confirmation of receipt is not a binding acceptance of an offer.
- b) Oral contracts and commitments are only binding if and insofar they have been confirmed in writing.
- c) If contract conclusions are conveyed by our representatives such conclusions require our written order confirmation to become binding. These General Terms and Conditions of Sale, along with any such written order confirmation, comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. We may prospectively amend or modify these General Terms and Conditions of Sale by providing reasonable, prior written notice of such amendment or modification to you.

3. Prices, Payment Terms

- a) All prices are net prices, free carrier (FCA according to Incoterms® 2020) plant Moravia, New York and exclusive of packaging material, using our standard methods for packaging and shipping, unless explicitly agreed otherwise. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income.
- b) Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations

under these General Terms and Conditions of Sale. Buyer shall comply with all export and import laws of all countries involved in the sale of the Delivery Goods or any permitted resale of the Delivery Goods by Buyer. Buyer assumes all responsibility for shipments of Delivery Goods requiring any government import clearance. Seller may terminate these General Terms and Conditions of Sale if any governmental authority imposes antidumping or countervailing duties or any other penalties on Delivery Goods.

- c) Each of our invoices shall become due and payable within 14 days upon receipt of the invoice, unless our signed order confirmation stipulates something different. If payment does not occur within this time period, the Buyer is in default. We may, in our sole discretion, without liability or penalty, make partial shipments and deliveries of Delivery Goods, and we are entitled to send partial invoices for partial deliveries. Payment by Buyer shall be made, without exception, to one of our banking accounts. Payments shall only be regarded as made if the respective amount is freely and finally available at our banking account.
- d) Our obligation to deliver requires the unconditional creditworthiness and performance of the Buyer. If after conclusion of the contract reasonable doubts occur in this regard, we are entitled at our option – without prejudice to any other rights or remedies, and without liability or penalty of any kind – to claim pre-payments for pending deliveries and to accelerate all amounts owed by Buyer to Seller, to delay any further shipment of Delivery Goods, to cancel any previously accepted orders, or to claim a security payment (or any combination of the above) and – if the Buyer does not provide the respective security within a reasonable time – to withdraw from our delivery obligation without liability. In such scenario the Buyer waives, is not entitled to claim, any damages or remedies of any other kind.
- e) The Buyer may only set off claims with undisputed counter-claims or counterclaims recognized by us or declared by non-appealable judgment. The Buyer is only entitled to assert a right to withhold payment when its counterclaim is derived from the same contract, is undisputed or is declared by non-appealable judgement.
- f) If the Buyer is in default for late payment, we are entitled to claim default interest in the lesser of 1.5% per month, or the highest amount permissible under applicable law. In addition, Buyer shall reimburse us for all reasonable costs incurred in collecting any late payments, and we are entitled to charge an amount of \$2.50 for each payment notice. This shall be without prejudice to the assertion of further default damage and any other rights and claims we may be entitled to by the applicable law.
- g) Claims of Seller may only be resolved by accepting payments or making other dispositions regarding our claims pursuant to a written document, signed by an authorized officer of Seller.

4. Delivery Periods / Delivery Dates

- a) Delivery periods and delivery dates are to be regarded as approximate only. We will endeavor to meet these. The delivery of Delivery Goods, for which we receive raw materials and supply parts from suppliers, is subject to the correct and timely delivery to us. Deviating provisions regarding binding delivery periods and delivery dates can only be agreed in a signed writing.
- b) In case our delivery is delayed we will inform the Buyer. The Buyer is only entitled to withdraw from the contract if we are responsible for such delay and a reasonable delivery deadline agreed to by Seller and Buyer has expired. No party shall be liable or responsible to the other party, nor be deemed to have defaulted, for any failure or delay in fulfilling or performing any term (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation: acts of God; flood, fire, earthquake, epidemic or explosion; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; government order, law, or actions; national or regional emergency; strikes, labor stoppages or slowdowns, or other industrial disturbances. However, such relief granted in the preceding sentence shall only be granted during the time period of such events and only insofar as these events actually affect the impacted party's contractual obligations.
- c) If the Buyer is in default of acceptance or violates any other obligation to cooperate we are entitled –

without prejudice to any other claims we may have in this regard – to reasonably store the Delivery Good at the Buyer's risk and costs or to cancel delivery or terminate the contract.

- d) We are entitled to conduct partial deliveries to a reasonable extent.

5. Warranty

- a) The agreed quality and specifications of the Delivery Good is strictly set forth in the concrete written contracts between us and the Buyer regarding the specifications, features and performance characteristics of the Delivery Good, which are written down in our offers. EXCEPT FOR SUCH EXPRESS WRITTEN WARRANTY IN OUR OFFERS, WE MAKE NO WARRANTY WHATSOEVER WITH RESPECT TO THE DELIVERY GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. The remedies set forth in this Section 5 shall be the Buyer's sole and exclusive remedy and our entire liability for any breach of the limited warranty set forth herein. Public declarations, recommendations or general advertisements do not represent any kind of contractual declaration of composition of the Delivery Goods.
- b) Any information contained in our standard product descriptions, catalogues, price lists or other information material provided by us to the Buyer are not to be regarded as warranties for a specific quality or kind of the Delivery Good. Such warranties must be explicitly agreed in writing.
- c) In case the production or processing of a Delivery Good is based on specifications made and released by the Buyer within quality descriptions, plans, sketches, drawings, etc. ("Specifications"), the quality is only assessed on these released Specifications. The Buyer is not entitled to any warranty claims against us for defects which are based on the Buyer's own Specifications.
- d) Notifications of defects will only be recognized, if they are given in writing upon the discovery of the defect without undue delay, at the latest, however, within 10 days after the Buyer received the respective Delivery Goods. The Buyer will be deemed to have accepted the Delivery Goods unless it notifies Seller in writing of any nonconforming Delivery Goods within 10 days of delivery, and furnishes such written evidence or other documentation as reasonably required by Seller. This Section 5(d) does not apply to hidden defects, which have to be notified in writing stating the invoice number upon their discovery without undue delay, and transportation defects as well as incomplete or obviously wrong deliveries which in any event have to be notified in writing stating the invoice number upon reception of the Delivery Goods without undue delay.
- e) The Buyer bears the burden of proof for all requirements of a material defects claim, including but not limited to the existence of a defect, the point in time the defect was detected, the existence of a hidden defect, the timely notification with regard to the defect and that the defect already existed at the time of the passing of risks.
- f) A rejected Delivery Good may only be sent back to us at our costs, if we have explicitly agreed or requested such Delivery Good to be sent back to us. In any event, in case of a notification of defect we are entitled to inspect and check the rejected Delivery Good at the Buyer's place.
- g) In case a complaint is justified we will at our discretion either remedy the defect or deliver a defectfree replacement item (both are hereinafter referred to as: "Supplementary Performance").
- h) We gain ownership of replaced Delivery Goods.
- i) In case the Supplementary Performance either fails, is not conducted despite a reasonable period of time, is intolerable for the Buyer or is improperly refused by us, the Buyer is entitled to claim a reduction of the purchase price or reject delivery solely of the defective items.
- j) We do not assume any liability or warranty for damages based on inappropriate or incorrect use, defective installation or commissioning by the Buyer or third parties, normal wear, incorrect or negligent treatment, inappropriate operating materials, replacement materials, defective construction works or

chemical or physical influences.

- k) The Buyer must bring claims regarding material defects within one year of delivery of the Delivery Good to the delivery location. With regard to the rights and claims of the Buyer in case of fraudulent concealment or willfully conducted defects, the statutory time limits apply.

6. Limitation of Liability

- a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE GENERAL TERMS AND CONDITIONS OF SALE, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE DELIVERY GOODS SOLD HEREUNDER.
- c) The aforementioned limitations of liability also apply in case of a violation of obligations caused by our legal representatives or vicarious agents.
- d) The limitations of liability set forth in this Section 6 shall not apply: (i) to liability resulting from Seller's gross negligence or willful misconduct; or (ii) to death or bodily injury to the extent resulting directly from Seller's acts or omissions.
- e) Buyer must bring claims (other than claims for defects, subject to Section 5) within one year.

7. Reservation of Title

- a) Risk of loss passes to Buyer upon delivery of the Delivery Goods at the delivery location. Title passes to Buyer upon full payment for the Delivery Goods ("Reservation of Title"). As collateral security for the payment of the purchase price of the Delivery Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Delivery Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code.
- b) The Buyer shall provide us at any time with all requested information regarding the Delivery Goods covered by the Reservation of Title ("Reserved Goods"). The Buyer has to inform us without undue delay in case of a seizure of or other accesses of third parties to the Reserved Goods or the claims assigned to us. The Buyer bears the costs of the defense against such accesses.
- c) If the Buyer is in default with regard to material contractual obligations, we are entitled – without prejudice to any other rights – to take back the Reserved Goods, i.e. the Buyer has to deliver the Reserved Goods to us and we are entitled to utilize them otherwise for the purpose of satisfying valid claims against Buyer.

8. Applicable Law

- a) All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. The parties waive application of the CISG.

9. General Provisions

- a) Buyer shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- b) Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the State of New York located in the County of Cayuga (or the United States District Court for the Northern District of New York), and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- c) If single clauses of these General Terms and Conditions of Sale are partly or entirely invalid the validity of the remaining clauses shall not be affected. The parties are obliged to replace the invalid clause with a valid clause, which most closely approximates the invalid clause. These General Terms and Conditions of Sale are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these General Terms and Conditions of Sale. Provisions of these General Terms and Conditions of Sale which by their nature should apply beyond their terms will remain in force after any termination or expiration of these General Terms and Conditions of Sale, including, but not limited to, the following provisions.
- d) In addition to any remedies that may be provided under these General Terms and Conditions of Sale, Seller may terminate these General Terms and Conditions of Sale or cancel any order or delivery, with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due; (ii) has not otherwise performed or complied with any of these General Terms and Conditions of Sale, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

As of February 2023