

General terms and conditions

1 Applicability

1.1 Unless otherwise specifically agreed in writing between the parties, including by means of a separate agreement or any specific conditions expressly stated in an offer or an Order Confirmation (as defined below), the legal relationship between Ontex and its affiliates (“the Seller”) and the buyer (“the Buyer”) shall be governed exclusively by these general terms and conditions of sale (the “General Terms and Conditions”).

1.2 All other terms and conditions are explicitly excluded, including any general terms or conditions which the Buyer may purport to apply under any purchase order, order confirmation, or similar document.

1.3 By placing an order with the Seller or by payment of the Seller’s invoice, the Buyer accepts the General Terms and Conditions. Any tacit derogation from and/or supplementation to the General Conditions of Sale is expressly excluded.

2 Indicative offers and orders

2.1 An indicative offer by the Seller to the Buyer shall remain valid for thirty (30) days following the date on which such indicative offer is made.

2.2 Orders received by the Seller shall become binding upon the Seller upon the acceptance in writing of such order by an authorised representative of the Seller (the “Order Confirmation”).

3 Product

3.1 A product (“Product”) shall mean any item sold by the Seller to the Buyer, including any product labelled otherwise than in accordance with the Seller’s own branding (“Private Label Products”).

4 Price and payment

4.1 The price for the Products is stipulated in the Order Confirmation, subject to adjustment pursuant to clause 4.3.

4.2 The price is exclusive of any VAT, taxes, levies, import or export duties and similar fees and costs of insurance, transport and packaging or other associated costs.

4.3 If the cost of one or more price-determining factors of the Products, including but not limited to taxes, levies, transport cost, raw materials, increases prior to the delivery of the Products, the Seller shall have the right to increase the price stated in the Order Confirmation. This does not apply if and to the extent the increase of price-determining factors was reasonably foreseeable by the Seller or the Seller is responsible for such increase.

4.4 The Buyer shall pay the price within thirty (30) days from the date of the Seller’s invoice. The Buyer shall perform its payment obligation via a wire transfer in accordance with the details mentioned on the invoice. The Seller shall, at its discretion, be entitled to issue electronic invoices.

4.5 In the case of complete or partial non-payment of the debt on the due date laid down in clause 4.4, the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the legal interest rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

4.6 The Buyer shall not be entitled to suspend and/or delay the payment of the purchase price. The Buyer is entitled to offset only insofar as the Buyer's counterclaims are acknowledged, undisputed or assessed in a legally binding judgement.

5 Delivery and delivery term

5.1 The Products shall be delivered in accordance with the Incoterms ® 2010 EXW factory of the Seller, unless otherwise indicated in the Order Confirmation.

5.2 Deadlines and dates for deliveries are always approximate unless a fixed deadline or date has expressly been confirmed or agreed on.

6 Transfer of risk and title

6.1 The risk of loss or damage to the Products is transferred from the Seller to the Buyer at the time of delivery as described in clause 5.1.

6.2 The Products remain the exclusive property of the Seller until complete payment of all invoices outstanding, including any incidental and additional amounts, such as any costs, interest and damages.

6.3 Until title to the Products has been transferred to the Buyer, the Buyer undertakes (a) to maintain the Products in satisfactory condition, (b) to do everything possible to protect the Products against any form of partial or complete deterioration, (c) to store the Products apart from any other goods and (d) to clearly mark the Products as property of the Seller.

6.4 The Buyer acknowledges that the Seller or one of its affiliates remains the exclusive owner of all intellectual property rights relating to the Products, including, the manufacturing process, chemical composition and technical specifications of the Products. Save in the case of Private Label Products the Seller remains the exclusive owner of the name, mark and logo under which the Products are sold. The Buyer undertakes to make no claim on the above mentioned intellectual property rights, whatsoever.

6.5 The Buyer shall be entitled to commence the sale of the Products prior to making full payment for the Products to the Seller. In any such case, the right to the sale proceeds shall vest in the Seller.

7 Inspection and complaints

7.1 The Buyer shall immediately inspect the Products at the time of delivery.

7.2 The Buyer shall notify the Seller in writing of any complaints the Buyer may have in respect of non-compliant delivery, transport damage or insufficient quantity within twenty four (24) hours from the time of delivery, failing which the Buyer shall be deemed to have waived its right to notify the Seller of any such complaint.

7.3 The Buyer shall provide written details to the Seller of all complaints with regard to visible defects, within five (5) working days of the time of delivery, failing which the Buyer shall be deemed to have waived its right to notify the Seller of any such complaint.

7.4 The Buyer shall provide details of any complaints or defects not referred to in clauses 7.2 or 7.3 above in writing to the Seller within eight (8) working days of their discovery or the date by which they ought reasonably to have been discovered following the date the Products were delivered to the Buyer, failing which the Buyer shall be deemed to have waived its right to notify the Seller of any such complaint.

7.5 The Buyer, upon making a complaint pursuant to clause 7.2, 7.3 and/or 7.4, shall offer the Seller a reasonable opportunity to examine the Products stated by the Buyer to be in default. The Seller shall have the right to investigate or have investigated the (circumstances of) the complaint on the premises of the Buyer at any time during normal business hours.

7.6 If the delivered Products prove to have been affected by defects, details of which the Seller has been made aware in accordance with the terms of this clause 7, the Seller shall, at its sole discretion, (a) replace the Products, (b) refund the Buyer or (c) grant the Buyer a price reduction.

8 Warranty and liability

8.1 The Seller warrants that the Products delivered are in conformity with the specifications as indicated on the Order Confirmation. Other than this, the Seller provides no express or implied guarantee or obligation with regard to the Products.

8.2 The Seller may from time to time make changes to the specifications of the Products as may be required to comply with any applicable safety or statutory requirements or which do not materially affect their quality.

8.3 Except in the event of wilful misconduct, the Seller shall not be liable for any lost profits, indirect, special or consequential damage or loss (including but not limited to loss of profit, loss of business, goodwill, time, data) or punitive or exemplary damages.

8.4 The Seller shall defend, indemnify and hold harmless the Buyer from and against any and all loss, damage, liability and claims thereof for all loss of and/or damage to property, as a result of, but only to the extent of, the Seller's proven wilful misconduct.

8.5 Except in respect of death or personal injury, the Seller's total aggregate liability to the Buyer and all third parties is limited to 1.000.000 EUR per occurrence and annual aggregate. The Seller shall not be liable towards the Buyer if the latter: (1) has not stored the Products, in the Seller's sole discretion, in conformity with the conditions set forth in clause 6.3; or (2) has not used the Products for the purpose for which they are intended.

8.6 In case of delivery of Private Label Products, the Buyer shall indemnify and defend the Seller, hold the Seller harmless and/or settle any action brought against the Seller to the extent that it is based on a claim that any Product made to meet the Buyer's specifications infringed intellectual property rights of another party.

9 Force Majeure

9.1 Neither the Seller nor the Buyer shall be liable for a delay or shortcoming in the execution of the agreement if this is attributable to force majeure. Force majeure is defined as, without limitation: order from governmental or similar authorities, mobilization, war, epidemic, lock-out, strike, demonstration, defects, fire, flood, explosion, lack of raw materials or labor forces, changed economic circumstances, vandalism, exceptional weather conditions and all circumstances which are outside the Seller's control and disturb the ordinary course of business.

9.2 The party that invokes force majeure shall, as soon as reasonably possible, inform the other party thereof and take all reasonable measures to overcome the temporary force majeure situation.

9.3 If the force majeure situation endures for a period of more than ninety (90) days, each party has the right to terminate the agreement without any compensation of any nature being due to the other party.

10 Confidentiality

10.1 The Buyer shall treat all received information, whether written or orally disclosed by the Seller, as confidential information and shall not disclose such information to any third party without the Seller's prior written consent. This obligation shall survive the relationship between parties for five (5) years. The Buyer will not be liable for the disclosure of any confidential information which is required to be disclosed by law or by any applicable regulatory authority.

10.2 The Buyer shall ensure that its directors, employees, agents and other intermediaries are bound by a similar duty of confidentiality.

11 Termination

11.1 In the following cases, the Seller is entitled to terminate the agreement with immediate effect without prior judicial intervention or any prior notice; (1) if the Buyer is declared bankrupt, under judicial reorganisation or is involved in any other insolvency procedure, or alternatively if an application for this purpose has been filed; (2) if the Buyer has a receiver, trustee, liquidator or any other administrator appointed over any element of his business, property, assets or monies; (3) if the Buyer is dissolved or a decision for liquidation of the Buyer is made; (4) if the Buyer ceases his activities of business or threatens to stop these; (5) if the Buyer does not fulfil his obligations under this agreement, and in so far as such non-fulfilment is capable of being remedied, if this is not remedied within ten (10) days of having been notified by the Seller or that non-fulfilment.

11.2 In case of delivery of Private Label Products, the Buyer shall purchase from the Seller all the Buyer specific materials or finished Products in stock of the Seller, upon termination of the agreement.

12 Assignment

12.1 The Seller shall be entitled to assign the agreement in whole or in part without the prior consent of the Buyer.

12.2 The Buyer shall not be entitled to assign the agreement or any part of it without the prior written consent of the Seller.

13 Miscellaneous

13.1 Failure or delay by the Seller in enforcing or partially enforcing any provision of the agreement shall not be construed as a waiver of any of its rights under the agreement, at present or in the future.

13.2 If at any time any provision of these general terms and conditions of sale should in any manner be or become illegal, invalid or unenforceable under any applicable law, neither the legality, validity or enforceability of the remaining provisions of these General Terms and Conditions and of the agreement, nor the legality, the validity or the enforceability of these provisions under the legislation of any other jurisdiction shall be affected or damaged in any way whatsoever. The Seller and the Buyer shall make all reasonable efforts and take all necessary actions to replace any illegal, invalid or unenforceable provision of these General Terms and Conditions with a legal, valid and enforceable provision with substantially the same economic scope for the parties and, to the extent legally permissible, to contain the original intention.

13.3 Completion of delivery of the Products or cancellation of the Confirmed Order for any reason, shall not release the Buyer from any liabilities or obligations set forth in these General Terms and Conditions which remain to be performed or by their nature would be intended to be applicable following any such cancellation or completion of delivery.

13.4 Both parties agree that they will comply with applicable Data Protection Legislation in respect of information transferred between the parties under these General Terms and Conditions. "Data Protection Legislation" means the EU Data Protection Directive 95/46/EC and the EU Directive on Privacy and Electronic Communications 2002/58/EC as implemented in the EU Member States.

14 Applicable law – competent court

14.1 Each agreement, which includes these General Terms and Conditions, shall be governed by and construed in accordance with Belgian Law. The United Nations Treaty regarding International Sale Agreements (the Vienna Sales Convention of 11 April 1980) is expressly excluded.

14.2 Any dispute arising out of or in connection with the General Terms and Conditions shall be subject to the non-exclusive jurisdiction of the courts of the Seller's registered office, on the understanding that the Seller has, at its sole discretion, the right to bring any dispute before the competent court of the Buyer's registered office and the Buyer and the Seller hereby submit to the jurisdiction of such court for these purposes.