



1. Definitions

1.1 'Affiliate' means with respect to a Party, any person which is controlled by or is under common control with either Party; for the purpose of this definition, a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

1.2 'Buyer' means without limitation, any corporation, company, partnership or other entity or individual to whom products are delivered by Seller.

1.3 'Agreement' means any written agreement of any kind (such as without limitation, Licensing Agreements, Supply Agreements, Distribution Agreements or Sales Agreements) signed between Buyer and Seller, including any amendments thereto.

1.4. 'Party(ies)' means Buyer and/or Seller.

1.5 'Seller' means Belchim USA, directly or indirectly through its Affiliates

2. Applicability

2.1 Any Buyer who is being supplied by Seller with products accepts the applicability of Seller's Standard Terms and Conditions of Sale ("STCS") without any restriction upon (i) accepting Seller's offer, (ii) providing Seller with an order or (iii) entering into an Agreement of any kind with Seller. The applicability of Buyer's standard terms and conditions is herewith explicitly excluded.

2.2 Deviations from the STCS can only be accepted if they are confirmed by Seller in writing. In case of contradictions between the terms of the STCS and the terms of an Agreement signed between Parties, the terms of the Agreement shall prevail.

2.3 The STCS have been written in several languages, however only the version in English is binding. Versions of the STCS in another language should be considered a free translation of the English version of the STCS.

2.4. Seller reserves the right to modify the STCS at any time, in which case they will become applicable 30 days after written notification of the modified STCS to Buyer.

3. Offers, acceptance and binding effect

3.1 All offers made by Buyer are binding and irrevocable. Buyer's offer will turn into a binding Agreement upon the date of acceptance of such offer by Seller in writing or upon the date of execution of said offer by Seller. This Agreement as well as all the engagements in this Agreement are considered to have their origin in the USA

3.2 All offers made by Seller are non-binding, unless expressly provided otherwise in the offer and unless made by a duly authorized representative of Seller. In the event of a binding written offer by Seller, such offer remains valid for a term of 1 month unless specified otherwise in the offer.

3.3 All statements by Seller of numbers, measurements, weights and/or other indications of the products have been made with care. However, Seller cannot guarantee that no deviations will occur in this regard. Samples shown or provided and drawings or models are only indications of the products concerned.

4. Price and payment

4.1 Unless explicitly mentioned otherwise, Parties have agreed upon fixed prices in USD. Prices are exclusive of (direct and indirect taxes, and (ii) transport and insurance costs, and (iii) all other costs. Buyer shall reimburse Seller for all taxes or charges imposed by any national, state or municipal government related to the products. In no event shall Buyer be entitled to deduct any taxes from Seller's prices.

4.2 Seller may proportionally adjust its prices at any time in the event Seller experiences increased costs as a result of any of the following:
- Increased costs of transportation and/or insurance
- Increased labor costs and/or material costs
- Governmental interventions, including but not limited to governmental orders or policies, changes in taxes, tariffs, rebates and currency exchanges.
Proportional price adjustments of this kind will become applicable immediately upon written notice to Buyer.
Furthermore, Seller reserves the right to, in its sole discretion, change or modify the prices from time to time on giving prior written notice to Buyer.

4.3 Unless explicitly agreed upon otherwise, Seller's invoices are payable within thirty (30) days after the date of issuance of the respective invoice ("the Due Date"). Seller's invoices are payable by Buyer by means of a wire transfer or other electronic means on the bank account as indicated by Seller is preferred. All payments to Seller will be executed at Seller's registered office. Payment costs (such as banking costs) will be borne by Buyer.

4.4 If Buyer defaults in the payment when due of any sum payable to Seller, Buyer's liability shall be increased to include (i) interests on such sum starting from the Due Date until the date of actual payment (as well after as before judgment) at a rate of 1% per month. Interests for late payment shall fall due without further notice.

4.5 In the event of Buyer's payment default persisting for more than 30 days starting from the Due Date, Seller shall be entitled to (i) cancel the pending orders or suspend pending orders until receipt of full payment, and (ii) restrict further orders to the condition of prepayment, and/or (iii) terminate the Agreement.

4.6 All payments by Buyer shall be made without any deduction, compensation or deferment (i) in respect of any disputes or claims whatsoever, or (ii) in respect of any taxes imposed by or under the authority of any governmental or public authority, or (iii) in respect of any amount which Seller is due to Buyer under any order, agreement or the performance thereof.

4.7 Seller can at any time—even after Buyer's bankruptcy or in case of concurrence, dissolution, liquidation or seizure—decide, to its sole discretion, to deduct or set-off any amount due to Buyer with amounts due by Buyer to Seller. It is herewith clarified that all payables and receivables in the contractual relationship between Seller and Buyer are to be considered related.
Furthermore, Seller's receivables will become immediately payable in the following events:
- Buyer's bankruptcy or any other case of concurrence, dissolution, liquidation or seizure
- Buyer's payment default as per clause 4.5
- A considerable change or deterioration in Buyer's financial situation
In such an event Seller will also be entitled to either immediately suspend or terminate the contractual relationship with Buyer and either perform remaining deliveries only against advance payment by Buyer.

4.8 By Seller agreed upon rebates only become due if at the end of the relevant period (year, contract year or as otherwise agreed upon) Purchaser has paid all its due invoices to Seller. If at the end of such relevant period one or more of Seller's invoices remain unpaid by Purchaser, the by Seller agreed upon rebates are automatically cancelled without any obligation to notify such cancellation to Purchaser.

5. Delivery

5.1 Unless explicitly agreed upon otherwise, product deliveries executed by Seller shall take place on an FOB basis.

5.2 The delivery date is indicative only and Seller shall not be liable for any losses, damages or expense whatsoever arising from the delay in delivery.

5.3 In the event that Seller is unable to deliver at the indicated delivery date, Seller shall to the best of its efforts notify Buyer of the delay. Upon receipt of such notice, Buyer and Seller shall negotiate a new delivery date in good faith.

5.4 Immediately upon delivery date, Buyer is required to verify if the delivered products contain any visible defects. Any claim for visible defects shall be made in writing and be received by Seller within 14 days after the delivery date. In the absence of Buyer's written claim, the products shall be deemed free of visible defects.
Buyer shall notify Seller of any claim for hidden defects in writing within 14 days after the date on which Buyer has discovered or should reasonably have discovered the hidden defect. In the absence of such written claim, the product shall be deemed free of hidden defects. In any event all warranty claims based on hidden defects shall be precluded once the shelf life of the product has expired.
If Seller challenges Buyer's claim regarding any defect, the matter shall be promptly referred to the decision of an independent reputable laboratory, to be jointly appointed by the Parties. The results of the laboratory shall be binding on the Parties, except in the event of manifest error. The cost of the laboratory shall be borne by the Party whose position will be rejected by the laboratory.

5.5 In the event of a defect Seller may, at its sole discretion and as sole remedy for the defect, decide:
1. to take the defective product back and to replace it by a conforming product, at Seller's sole cost; or
2. dispose of the defective product, at Seller's sole cost, and compensate Buyer for the price of the products (including transaction costs); or

5.6 In no event can Seller be obliged to compensate Buyer or to take back defective products if (i) the shelf life of the product has expired or the "best before" date if mentioned on the products have been exceeded; or (ii) if the products are no longer sellable through Buyer's fault.

5.7 Unless expressly agreed upon otherwise, if Seller delivers products to Buyer no rights to re-label, repack or reformulate the products are granted to Buyer, hence Buyer shall amongst others refrain from (i) reverse engineering the products, and (ii) selling the products as co-packs, twin-packs or similar, and (iii) selling the products as mixture formulations in combination with Buyer's (or third party's) products. All possible improvements, modifications or inventions related to Seller's products shall vest in Seller, hence Buyer shall refrain from applying for patent protection without Seller's prior written approval.

6. Risk and title

6.1 All risks related to the products shall pass to Buyer upon the date of delivery as per clauses 5.1 and 5.2 above.

6.2 Property (or title) of the products shall pass to Buyer only (i) upon full payment of Seller's according invoices in accordance with Section 4 above, and cumulatively (ii) upon full payment for all payable debts by Buyer to Seller.

6.3 Specifically for product deliveries it is herewith clarified that as long as Seller remains owner of these products, the following will apply:
- Buyer shall assume the duties and responsibilities of a good fiduciary agent and bailee of the products supplied and consequently undertakes to safely and securely store them and to insure them against damage, destruction, theft, fire, loss, etc. from any cause;
- Buyer shall at its own costs warehouse Seller's products separately from other products and shall ensure that Seller's products are clearly identifiable as belonging to Seller;
- Buyer shall, at Seller's request, take any measures necessary under applicable law to protect Seller's title in the products and lawfully notify Buyer's present or potential creditors of Seller's title on and interest in the products;
- Buyer is entitled to sell Seller's products in the ordinary course of business, however third parties to whom these products are sold should be duly informed by Buyer that these products remain Seller's exclusive property until full payment for all payable debts by Buyer to Seller;

6.4 Seller retains a pledge on delivered products that have become Buyer's property through payment and which are still in the hands of Buyer (whether or not in processed, mixed or repackaged form) as additional security for claims that Seller may have against Buyer for whatever reason. Buyer is obliged to provide sufficient security for its payment obligations towards Seller at first request and to Seller's satisfaction by establishing a pledge with the highest possible rank on Buyer's products, including a pledge on Buyer's claims against its debtors. If Buyer is unable to provide sufficient security as referred to above, Seller retains the right to limit deliveries to Buyer on a "cash on delivery" basis.

6.5 Buyer undertakes not to transfer or pledge any claims that Buyer acquires against its customer to third parties without Seller's prior written consent. Buyer further undertakes to pledge the said claims to Seller as soon as Seller expresses its wish to do so, as additional security for its claims for whatever reason against Buyer.

6.6 Without prejudice to any other rights Seller may recover any or all of the products supplied to Buyer upon demand at any time before title has passed to Buyer. Buyer undertakes to give access to its premises and the products to enable Seller to retake possession of the products.

7. Warranties and liabilities.

7.1 Unless explicitly agreed upon otherwise, Seller's obligations do not guarantee any result. Seller's obligations are obligations of means only.

7.2 Seller warrants that at the time of delivery Seller's products will meet the specifications of which it has informed Buyer. Seller does not make any other representation or warranty and excludes all other express or implied warranties. Specifically, for products Seller amongst others excludes warranties of fitness for a particular purpose and merchantability of its products.

7.3 To the fullest extent permitted by law Seller shall not be liable to Buyer under any circumstance:
(i) for Buyer's, Buyer's Affiliates or a third party's incidental, indirect or consequential loss or damage, loss of profit, loss of business, loss of business opportunity, loss of revenue or depletion of goodwill howsoever arising; nor

(ii) for any losses to the extent arising from subsequent misuse of the products by Buyer or a third party, including (without limitation) willful damage, or losses arising from the Buyer's negligence, or that of its Affiliates, agents or employees, or losses arising from any failure to follow Seller's instructions as to use, store or handle the products, the use of the products for another purpose for which it is fit, abnormal working conditions or any alteration or
repair of the product by any manufacturing or repackaging process or otherwise; nor
(iii) for any damages, in connection with the sale of products, exceeding the lower of either (a) the damage actually suffered by Buyer or (b) the price of the relevant products which caused the loss or damage in connection with which Seller may be liable.

7.4 In relation to the products delivered by or on behalf of Seller, Buyer shall indemnify Seller against any third party claims. Buyer shall inform Seller without undue delay about any claims related to products delivered by Seller.

8. Force majeure

8.1 Neither Party will be liable to the other Party for any delay or non-performance caused by circumstances beyond its reasonable control which could not reasonably be planned for or avoided ("Force Majeure Event"). A Force Majeure Event includes, but is not limited to, strikes, Pandemics, riots, wars, natural disasters, unavoidable shortage of raw materials, delivery failure by suppliers, unavoidable breakage or failure of machinery, unavoidable governmental restrictions.

8.2 A Party whose performance is affected by a Force Majeure Event shall:
(a) notify the other Party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations; and
(b) use reasonable endeavors to avoid or mitigate the effect of such event on the other party and the performance of the affected party's obligations and resume full performance of its obligations as soon as reasonably possible.

8.3 Where a Force Majeure Event continues for a period of 30 continuous days or more, either Party may by written notice to the other terminate the product delivery. In such event, no indemnity or costs of any kind will be due by the terminating party for such termination.

9. Product stewardship

Buyer agrees that the products will be warehoused, transported and marketed in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with Seller's recommendations and applicable laws and regulations.

10. Intellectual Property Rights ("IPR") and Confidentiality

IPR is to be understood as all intangible rights protecting the products of human intelligence and creation, including but not limited to copyrights, patents, models, plant breeders rights, design rights, trademark rights, sui generis rights, and other possible intellectual property rights and related rights in works, documents, images, performances, creations, computer programs, databases, studies, research, methods, implementations, (local) product registrations or inventions, including all related and associated rights and all other forms of similar protection throughout the world.
All IPR related to Seller's delivered products remain Seller's exclusive property. Unless expressly provided for otherwise, Seller does not provide Buyer with a license to use Seller's IPR.
All information (and in particular Seller's ideas, developments and technologies) provided by Seller to Buyer during the course of their cooperation (of any kind) is to be considered strictly confidential (hereafter "Confidential Information"), except for (i) information of which Buyer can prove that it is already in the public domain, and (ii) information of which Buyer can prove that it was already known by Buyer or was already independently developed by Buyer without the benefit of Seller's Confidential Information. The Confidential Information cannot be communicated to any other person, entity or organization without Seller's express and prior written approval and cannot be used for any other purpose than the purpose as expressly agreed upon between Parties. The confidentiality and non-use obligations arising hereunder shall continue to apply for as long as the cooperation (of any kind) between Parties continues and until ten (10) years thereafter.

11. Miscellaneous

11.1 If any provision of the STCS or a part of any provision of the STCS is deemed void or unenforceable or incompatible with mandatory legal provisions or legal provisions of public order, the remainder of the STCS or the remainder of those provisions of the STCS will be unaffected and will continue to be valid and enforceable. The void/unenforceable/incompatible provision shall be replaced by a valid one, which in its economic effect complies most with the void/unenforceable/incompatible provision.

11.2 Nothing under the STCS is intended or shall be construed to create or establish an agency, partnership, or joint venture relationship between Seller and Buyer.

11.3 Buyer is not entitled to assign its respective rights and obligations under the STCS without the prior written authorization of Seller, provided however, that such consent shall not be required if the assignment relates to an Affiliate.

11.4 Any amendment to the STCS, as well as any additions or omissions, can only take place with the written consent of Seller.

11.5 No failure in exercising any remedy or right hereunder shall be construed as a waiver of such remedy or right, nor shall any failure in exercising a right or remedy hereunder due to an instance of breach or default imply acquiescence of such breach or default in similar situations, whether occurring theretofore or thereafter, and which may be considered in a similar manner.

11.6 The collection of personal data by Seller is subject to Seller's privacy policy as published on Seller's website. Buyer is at all times entitled to ask a copy of Seller's privacy policy.

12. Applicable law and Jurisdiction

12.1 The STCS and the underlying transactions shall be governed by and construed in accordance with the laws of the Netherlands excluding its conflict of law provisions. Parties further agree that the Convention on the International Sale of Goods shall not apply to their reciprocal obligations arising under the STCS.

12.2 The courts of Amsterdam shall have exclusive jurisdiction to settle any disputes arising out of or in connection with the present STCS, regardless of their origin (i.e. including without limitation contractual and extra-contractual claims in tort (including competition law), undue payment or unjust enrichment).