

## General Terms and Conditions of Purchase

*[These general terms and conditions of purchase (“Terms and Conditions”) shall constitute part of an Order, unless the purchases agreement explicitly refers to different specific terms and conditions in which case those specific terms and conditions shall prevail over the Terms and Conditions below]*

### 1. Agreement

These Terms and Conditions are intended to establish the terms, conditions and procedures under which **Ottana Polimeri S.r.l, Italy** (the “**Company**”) shall purchase products from a seller (the “**Seller**”), and shall apply to all offers made by, orders placed by the Company (“**Order**”) and agreements concluded with the Seller mentioned in the relevant offer, order or agreement in relation to the purchase by the Company of the supplies or materials (“**Products**”) described therein. The Company’s purchase of the Products is expressly conditioned on the Seller’s acceptance of these Terms and Conditions in writing. The Company expressly notifies the Seller of its objection to any different and/or additional terms proposed by the Seller in the Order or acceptance, or other document issued by the Seller, and the Company will not be bound by any standard or printed terms or conditions presented by the Seller. Unless explicitly and specifically objected to in writing by the Company, the Terms and Conditions shall apply to all offers, Order confirmation, Order acceptances, or purchases whether or not they applied to a prior purchase by the Company. The Company reserves the right to revoke any Order at any time before acceptance by Seller.

*“Affiliate” means, in relation to either Party, a subsidiary or a holding company of that Party or a company subject to the same control of the Company.*

*“Company” means the purchaser of the Products under these Terms and Conditions.*

*“Contract” means any of the following: Terms and Conditions and/or the Order and/or a purchase agreement for purchase of the Products by the Company from the Seller.*

*“Party” means, individually, the Company or the Seller and “Parties” means both of them collectively.*

### 2. Price

The price payable for the Products (“**Price**”) and any other terms and conditions of purchase shall differ from what stated in the Contract and unless otherwise stated, in writing shall be:

- (a) inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to the delivery point herein and any duties, imposts, levies or taxes (including any sales or use tax) other than value added tax; and
- (b) fixed for the entire term of the applicable Contract and, therefore, the Parties expressly agree to contract out from article 1467 (*eccessiva onerosità sopravvenuta*) of the Italian Civil Code.

Seller covenants that if it should, at any time prior to the delivery of the Products sold hereunder, sell or undertake to sell similar Products in similar quantities to any third party at lower prices, it shall immediately notify the Company in writing of such lower prices, and the Company will immediately receive the full benefit of such lower prices.

No variation in the Price nor extra charges can be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company. Any unilateral change or attempt to change of the Price by Seller, even partial, shall entitle the Company, in its absolute discretion, to withdraw from the Contract and/or cancel partially or totally, the corresponding Order, without the latter being responsible, for any costs or damages, towards the Seller.

### 3. Payment

Payment terms shall be as agreed to by the Company and the Seller and set forth in the Contract. The Seller will separately invoice the Company for and in respect of each purchase and consignment of the Products delivered under each Order.

Unless otherwise stated in the Contract, the Seller shall invoice the Company for each Product on or after delivery of such Product to the Company, and the Company shall pay such invoice not earlier than ninety (90) days from the date of receipt of the invoice.

Without prejudice to any other right or remedy, the Company reserves the right to set

off (*compensazione volontaria*), according to the provisions under article 1252 of the Italian Civil Code, any amount owing at any time from the Seller or Affiliates of the Seller to the Company for any title whatsoever against any sums payable by the Company to the Seller or Affiliates of the Seller under the Contract.

#### **4. Title and Risk of Loss and Buying Terms**

##### ***A. Domestic Purchases***

Notwithstanding any terms relating to delivery and freight on the Contract, the title and risk of loss in the Products shall remain with Seller until the earlier of: (i) payment of the Price; and (ii) acceptance of the Products by the Company.

##### ***B. International Purchases***

Unless otherwise agreed in writing in the Contract, title shall pass from the Seller DDP point of delivery designated in writing, from time to time, by the Company (INCOTERMS 2010).

#### **5. Insurance**

##### ***A. Domestic Purchases***

Unless otherwise stated in the Contract, the Seller shall insure the Products up to the delivery point indicated in Section 4A above, whilst, thereafter, the Company will be entitled to decide, in its absolute discretion, whether to insure the Products.

##### ***B. International Purchases***

The Seller/the Company shall be responsible for insuring the Products as per DDP (INCOTERMS 2010).

However, in the event of any damage to the Products occurs before the title passes to the Company, the Company shall be entitled, in its absolute discretion, to elect to receive the claim from the Seller's insurer. To this end, the Seller shall ensure that the Company be co-insured under the relevant policy.

The insurance provided by the Seller must be made to cover any damages or loss of the Products for the full amount of the Products insurable value.

#### **6. Shipment and Delivery**

Unless otherwise agreed in writing in the Contract, the Seller shall deliver the Products at DDP place of delivery designated in writing from time to time, by the Company (INCOTERMS 2010).

Delivery on the Order must be made in the quantities and on the delivery dates specified by the Company; each delivery date shall be considered as a guaranteed and essential deadline (*termine*

*essenziale*) for the delivery of the Products under article 1457 of the Italian Civil Code. The Company, in its absolute discretion, may reject any early delivery of the Products.

Unless otherwise stated in the Contract, the Products shall be delivered during normal business hours. The Seller shall ensure that each delivery is accompanied by a delivery note which is prominently displayed and which shows, *inter alia*, the Order/Contract number, date of Order/Contract, number of packages and contents, duly issued and signed commercial invoice, transport documents, full set of signed ocean bill of landing and all documents, necessary to reasonably evidence the Seller's ownership over the Products. The Company shall not be deemed to have accepted the Products until the Company has had fifteen (15) days to inspect them following delivery or, in the event of any latent defect, sixty (60) days after the relevant defect in the Products has actually been discovered by the Company. The Seller shall supply the Company on delivery of the Products with all operating and safety instructions, warning notices clearly displayed, and other information as may be necessary for their proper use, maintenance and repair. Where delivery of the Products is to be made in bulk, the Company reserves the right, in its absolute discretion, to accept up to five per cent (5%) more or five per cent (5%) less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered.

#### **7. Product Characteristics and Suitability**

The Seller undertakes to deliver the Products of the quantity, quality and description which strictly corresponds to the technical specifications quantity and description, with the particulars and/or specifications in the Order/Contract and/or the sample accepted by the Company and/or in any applicable specification supplied by the Company to the Seller or the quotation provided by the Seller to the Company. The Products shall be without fault and defects and shall be new and unused unless otherwise specified. The Seller shall comply with all applicable legal requirements, regulations and/or standards concerning the manufacture, packaging, packing and delivery of the Products and which shall conform with all legal requirements and national and EU regulations. The Products shall be clearly labeled. The packing and packaging of the Products shall be (i) in accordance with best international packing standards so as to ensure adequate protection against damage, deterioration and moisture; (ii) suitable for long distance ocean shipping and freight transportation and (iii) in accordance with applicable laws, regulations and standards.

The Company shall at all reasonable times: (i) be entitled to examine, inspect, measure and test the Products and (ii) have full access to the Seller's premises where the Products are produced, manufactured and packaged.

The Company shall not be bound to accept the delivery of Products which either (i) do not comply with the specifications, (ii) and not comply with the standards of packaging provided under this Section 7 or (iii) have faults or defects.

The Company may return any rejected Products at the Seller's risk and expense. The right to reject shall extend to the whole or any part of a consignment. In any case of rejection of the Products by the Company, the Products shall be considered as not delivered by the Seller. The Seller shall be responsible for repayment to the Company of all costs, losses, damages and expenses whatsoever incurred by the Company due to rejection of the Products and/or any additional expenditure actually incurred by the Company in obtaining other products to replace the rejected Products.

The Seller shall promptly repair or replace the Products damaged or lost in transit, in storage or during unloading, whether or not by the Company, provided the Company gives written notice to the Seller of the damage or loss within ninety (90) days from the date of the actual discovery.

#### **8. Changes to Product specification/ Purchase Order**

The Company may, at any time, by written notice to Seller, request changes to the Contract, including changes in the drawings or specifications, method of shipment, quantities, packing or time or place of delivery. In response to such request, if such changes result in additional charges, Seller agrees to promptly provide written quotations, including any changes to the Price, shipment or delivery dates. A request for change shall be treated as a separate Order, unless otherwise agreed by the Parties in writing. Any claim or adjustment proposed by the Seller must be approved by the Company in writing before such proposed claims or adjustments become binding on the Company.

#### **9. Representations and Warranties**

The Seller represents and warrants to the Company that:

- (a) it is a company validly incorporated and existing under the laws of Italy;
- (b) it has obtained every qualification and every consent necessary for performing its obligations under the Contract;

- (c) it is able to perform all its obligations under the Contract, which represent the valid and binding obligations of the Seller to be performed in accordance with the Contract;
- (d) it holds good and valid title to all Products delivered by the Seller under the Contract;
- (e) the Products are free of any encumbrances or third party rights;
- (f) the negotiation and execution of this Contract and the performance of the obligations set out in it do not violate and will not violate the Seller's deed of incorporation and by-laws, nor do they or will they constitute an event of default under any agreement entered into by the Seller; and
- (g) it has not entered into agreements or undertaken contractual obligations that could adversely affect the Seller's ability to perform its obligations under the Contract or cause it to be in breach of the Contract.

The Seller further represents and warrants to the Company that the Products: shall be new and unused, of satisfactory quality, material and workmanship, merchantable, free of defect in design, material and workmanship and fit for any purpose for which they are intended and shall conform to the specifications set forth in the Contract. In addition, Seller represents and warrants that (i) the Products shall be made in accordance with the specifications and the standards of packaging provided under the Section 7 above and shall conform to the affirmations of fact stated in this Section 9; (ii) the Products shall comply with all statutory requirements, applicable laws and regulations and voluntary codes of conduct relating to the Products and their sale, use and supply; (iii) in performing its obligations hereunder, Seller shall fully comply with all applicable laws and regulations; (iv) the Products or the intended use thereof do not infringe the intellectual property rights of any third party; and (v) any services included in the Products shall be performed in a professional manner, in accordance with best applicable industry standards. Seller further represents and warrants that it is able to transfer to the Company good and marketable title to the Products. All the representations and warranties set forth in this Section 9 shall survive acceptance of the Products and shall be in addition to any other warranties, express or implied, available to the Company under the Italian Civil Code or otherwise. Neither

inspection nor acceptance of the Products shall impair any of the foregoing warranties.

## **10. Limitation on Damages**

The Company's liability, for any injuries, losses, damages, expenses, costs or other liabilities arising out of the withdrawal from the Contract or cancellation of the Order by the Company, any breach of this Contract by the Company, or any other Company's acts or omissions shall be limited to the lesser of (i) the actual and direct costs incurred by Seller for its manufacture of the Products in question prior to such withdrawal, cancellation, breach, or other acts or omissions, and(ii) the Price for the Order. In no event shall the Company be liable to Seller for loss of profits (*lucro cessante*), punitive, special, consequential, indirect, exemplary or incidental damages.

## **11. Indemnity**

The Seller shall indemnify, hold harmless and, upon the Company's request, defend at Seller's sole cost and expense, the Company and its Affiliates, the Company's and its Affiliates' employees, agents, officers, directors, distributors, dealers and all entities which purchase the Products or products into which the Products are incorporated, and their respective customers, harmless against any suit, action, proceeding, judgment, liability, cost, damage, loss, claim and expenses (including attorneys' fees and costs) occasioned by, arising out of, relating to or alleging any claim for injury, death, damage or loss to any person or any property or any consequential or incidental damages resulting therefrom, caused or contributed to by (a) any fault defect or alleged defect in the Products (including by reason of strict liability in tort), (b) the Seller's breach of any provision of this Contract, (c) any act, omission, fault, or negligence of Seller or anyone acting on its behalf or (d) any infringement, misappropriation or other violation of the patent, trade secret, trademark, trade name, or other intellectual property right of any other person, firm, corporation or other entity arising from the manufacture, packing, packaging, transport, storage, sale or use of any of the Products. The Seller shall be and is responsible for the acts and omissions of Seller's employees, agents, officers, directors sub-contractors or other representatives within or about the Company's premises and agrees to indemnify and hold the Company, its Affiliates, the Company's and its Affiliates' employees, agents, officers, directors, distributors, dealers and all entities which purchase the Products or products into which the Products are incorporated, harmless against liability for damage to property or injury to or death of persons arising out of acts or omissions of the Seller's employees, agents, officer, directors, sub-contractors or other representatives. In the event of a claim by a third party against the Company which may be the subject of

indemnification, the Company shall provide written notification thereof to the Seller. The Seller shall provide the Company with full and prompt assistance in the prosecution of any defense as the Company may request. The Seller shall, in respect of any third party claim or suit, reimburse the Company for the legal and other defense expenses paid by the Company and/or the Company's insurance carriers, and for the actual amount of any settlement or judgment paid by the Company and/or the Company's insurance carriers. The Seller shall indemnify the Company and its Affiliates, the Company's and its Affiliates' employees, agents, servants, officers, directors and employees, distributors, dealers and all entities which purchase the Products or products into which the Products are incorporated, against all actions, claims, demands, costs, charges and expenses (including legal and other defense expenses) arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other intellectual property right.

## **12. Cancellation and Withdrawal**

The Company shall be entitled to withdraw from the Contract (*recesso ad nutum*) and/or cancel, in whole or in part, any Order by giving notice to the Seller at any time prior to delivery of the Products in which event the Company's sole liability shall be to pay to the Seller the Price for such Products as have already been delivered at the time of withdrawal or cancellation, as the case may be.

## **13. Delay in delivery**

The Seller must deliver the Products to the Company within the schedules as prescribed in the Order or as agreed in the Contract provided that each delivery date set out in such schedules shall be considered as a guarantee and essential deadline (*termine essenziale*) under article 1457 of the Italian Civil Code. If the Products are not delivered on the due date then, without prejudice to any other rights which it may have under the Contract, the Company shall have the right to terminate the Contract pursuant to article 1456 (*clausola risolutiva espressa*) of the Italian Civil Code. Furthermore, the Company shall be entitled to: (i) refuse to accept any subsequent delivery of the Products which the Seller attempts to make; (ii) recover from the Seller any expenditure incurred by the Company in obtaining Products in substitution from another supplier; and (iii) claim damages for any additional costs, losses or expenses (including legal and the defense expenses) incurred by the Company which are in any way attributable to the Seller's failure to deliver the Products on the due date.

#### **14. Force Majeure**

Each Party may suspend the performance of its obligations during the occurrence of an event of force majeure (“**Force Majeure**”), which shall mean any event occurring at the place where the Products are manufactured or on international recognized routes from such place to the delivery point, which is unforeseeable also acting in accordance with the best industry practice, and which is not caused by, and outside the control of the Party which invokes it, and which renders said Party unable to comply with its obligations under this Contract. Subject to the foregoing, the following events may be considered as Force Majeure: acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, national strikes, fires floods, earthquakes, storms and epidemics . The obligations of the Party affected by the Force Majeure shall be regarded as suspended for the duration of such Force Majeure. If a Party is prevented from performing its obligations by the occurrence of a Force Majeure, then it shall give notice to the other Party of the circumstance constituting the Force Majeure and shall specify the obligations the performance of which is prevented. The notice shall be given within forty–eight (48) hours after the Party became aware, or should have become aware, of the relevant event or circumstance constituting a Force Majeure. In the event the Seller is the Party affected by the Force Majeure, it shall, at all times, use all reasonable endeavors to (i) minimize any delay in the performance of its obligations as a result of a Force Majeure and (ii) mitigate the prejudicial effects of a Force Majeure. At the occurrence of any Force Majeure, the Company shall be entitled to, at its absolute discretion and without any charge or penalty, to withdraw from the Contract or cancel any Order or any part thereof, and/or obtain the Products covered by the Order from other sources for the duration of the Seller’s inability to perform due to the occurrence of a Force Majeure and/or to reduce the quantity of the Products specified in any Order without charge or penalty. Either Party may withdraw from the Contract, with written notice to the other Party, if a Force Majeure lasts for a consecutive period longer than three (3) months.

#### **15. Waiver**

No waiver by the Company of any breach by the Seller of any of the Contract, or delay or failure of the Company to enforce any right or remedy, shall be construed as a waiver of any succeeding breach of the same or any other term or condition. Nothing contained herein shall limit the remedies of the Company in the event of the Seller’s breach of any of the Contract.

#### **16. Assignment**

The Seller shall not assign to any person or entity a Contract or any of its rights or obligations under a

Contract without the prior written consent of the Company in its absolute discretion, and any attempted assignment without that consent shall be void. The Company may freely assign a Contract, without the consent of the Seller, (i) to any of its Affiliate, (ii) in the event that the Company shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, partnership, organization or other entity, or (iii) in the event of lease, usufruct or assignment of a going concern (*ramo d’azienda*) by the Company. The Company shall have the right to freely assign all or parts any of its right and obligations under the Contract to third parties.

#### **17. Severability**

If any provision of a Contract or an Order is held by a competent authority to be invalid or ineffective, the validity and effectiveness of the other provisions of the Contract or such Order shall not be affected.

#### **18. Notices and Communication**

Any notice or other communication that either party gives relating to the purchase of the Products by the Company shall be made in writing and given either by hand, first class recorded postal delivery, or electronic mail to a previously designated authorized individual or facsimile transmission.

#### **19. Conflicting provisions**

Subject to the provision under Section 1 above, in the event of any conflicting or inconsistent provisions between the specific Order and the Contract, the provisions of the specific Order shall always prevail and take precedence with respect to any such conflicting or inconsistent provisions.

#### **20. Status of Seller**

Nothing in a Contract or in these Term and Conditions shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Seller and the Company.

#### **21. Confidentiality**

Neither Party may reveal or convey to third parties the existence of the Contract, their clauses, statements, or other provisions, without the express prior written authorization of the other Party. The Parties shall likewise

refrain from revealing or conveying to third parties by any means whatsoever any information relating to the organization of the other Party, including, by way of example, technical, production, industrial, commercial, organizational, employment, or financial information, except as expressly permitted herein.

In any event, a Party that reveals or conveys any such information to third parties, with the express prior written authorization of the other Party, may only do so by requiring that such third party receivers of such information to undertake the same confidentiality commitment as that described herein.

Notwithstanding the foregoing, the Company may disclose the information when required by the applicable laws or by its [rating agencies], actual or potential financial institution or its professional advisers.

The duty of confidentiality shall be indefinite and shall remain in force after the termination or expiration of the Contract.

The provisions above shall not apply to: (i) information in the public domain obtained otherwise than by breach of this Section; (ii) information which (a) was already in the possession of the receiving Party before divulgence thereof and (b) was not obtained from a third party that was under any obligation of confidentiality; and (iii) information obtained from a third party who the receiving Party believes, after reasonable inquiry, is free to divulge the same so long as the information was not obtained by the receiving Party under any obligation of confidentiality to the third party.

## 22. Mutual Data Protection

Under article 13 of Italian Legislative Decree No. 196 of 30 June 2003:

- (a) the personal data of the Parties acquired during negotiation, execution or performance of the Contract (the **Parties' Data**) shall be processed, including by electronic and automated means, for the purposes relating to the performance of the Contract or for compliance with legal requirements;
- (b) conferment of the Parties' Data is optional, but refusal to provide the Parties' Data may cause difficulties in the performance of the Contract;
- (c) the Parties' Data shall be disclosed only to consultants or Affiliates of the Parties or to persons appointed to process the relevant data for the purposes set out in paragraph (a) and shall not otherwise be disclosed or divulged to third parties;

- (d) in relation to the processing of the Parties' Data the Parties may exercise the rights set out in article 7 of Italian Legislative Decree No. 196 of 30 June 2003.

## 23. Model of Organization, Management and Control (Legislative Decree No. 231/2001)

The Seller acknowledges to be aware of:

- (a) the administrative and criminal liability of corporations under Legislative Decree No. 231 of 8 June 2001 and its implications for the Company; and
- (b) the organizational, management and control model followed by the Company.

In this regard, the Seller represents that it has never been part of proceedings under Legislative Decree No. 231 of 8 June 2001 and undertakes to comply throughout the duration of the Contract with the principles set out thereof.

## 24. Language

The official language between the Parties shall be Italian and all communications between the Parties related to the Contract shall be in such language.

## 25. Governing Law and Disputes Resolution

The Contract shall be governed by and construed in accordance with the laws of Italy, excluding any application of the "United Nations Conventions on Contracts for the International Sale of Goods of 11 April 1980". Any dispute arising out of or related to the Contract shall be settled by arbitration under the Rules of the Chamber of Arbitration of Milan, by three arbitrators, appointed in accordance with such rules. The seat of the arbitration shall be Milan and the arbitration proceeding shall be carried out in Italian.

### For Acceptance:

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The Seller hereby declares that expressly accepts the following Sections of the Terms and Conditions of Purchase, in accordance with articles 1341 (Condizioni generali di contratto) and 1342 (Contratto concluso mediante moduli o formulari) of the Italian Civil Code:

Section 1 (Company's right to revoke the Order); Section 2(b) (Derogation to the article 1467 of the Italian Civil Code); Section 2-Third Paragraph (Company's right to withdraw

from the Contract or cancel the Order in case of unilateral change); Section 3-Third Paragraph (Right to set off); Sections 5B (Company's right to receive the claim from the Seller's insurer); Section 6-Second Paragraph (Delivery deadline as essential date); Section 6-Third Paragraph (Company's term of inspection);

Section 6-Third Paragraph (Company's discretion in acceptance tolerance); Section 6-Third Paragraph (Seller obligations to repair or replace the Products); Section 6-Third Paragraph (Company's right not to accept); Section 7-Second Paragraph (Company's rejection right) Section 8 (Changes to Products specifications); Section 10 (Limitation liability) Section 11 (Indemnity);

Section 12 (Cancellation and withdrawal); Section 13 (Automatic termination under article 1467 of the Italian Civil Code); Section 13 (Additional Company's remedies in the events of delay in delivery); Section 14 (Force Majeure); Section 14 (Right of withdrawal); Section 15 (Waiver); Section 16 (Assignment); Section 21 (Confidentiality); Section 22 (Mutual data protection); Section 25 (Arbitration).

**For Acceptance:**

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