

## GENERAL CONDITIONS OF SALE

### 1. General

1.1 These General Conditions of Sale shall apply to all sales of products (hereinafter referred to as

**“Products”**) made and/or manufactured by Ferrero S.p.A., with registered office in Casalgrasso (Turin,

Italy), Via Pancalieri 1, VAT n. IT02106920040 (hereinafter referred to as **“Ferrero”**).

1.2 Any amendment or supplement to these General Conditions of Sale shall have expressly agreed upon

in writing between Ferrero and the purchaser (hereinafter referred to as the **“Purchaser”**).

1.3 By sending an order to Ferrero, or by accepting an offer from Ferrero, the Purchaser is deemed to have

accepted all these General Conditions of Sale and the two parties shall be bound by a contract regulated

by the particular conditions accepted by the parties and by these General Conditions of Sale (hereinafter referred to as the **“Contract”**).

### 2. Characteristics of the Products

2.1. Weight, dimensions, prices and other data contained in catalogues, circulars or other descriptive

documents of Ferrero shall all constitute approximate indication only.

2.2. Products are manufactured in accordance with European standards and specifications and may

therefore not conform to standards applicable in other territories.

### 3. Orders

3.1. Purchase orders for Products shall be made in writing by the Purchaser; dispatch of any order shall be

considered binding for the Purchaser, while any obligation on the part of Ferrero shall arise only upon

specific written acceptance of the order by Ferrero.

3.2. The terms and conditions governing the individual contract of sale resulting from the acceptance of an

order shall be those provided for in the Contract.

3.3. The Purchaser cannot cancel an order, whether in part or in full, already confirmed by Ferrero. In case

of default in Purchaser's obligation to make any payment regarding such order, the Purchaser agrees

to compensate Ferrero for any damages occasioned thereby. In addition to any remedy of law to which

Ferrero is entitled, Ferrero shall have the right to retain all deposit or advance payments already

received with respect to such order, and the Purchaser shall be liable for any expenses or losses

incurred by Ferrero.

#### **4. Price and Conditions of payment**

4.1. All invoices that are not rejected within 8 (eight) days from receipt will be considered as fully accepted.

4.2. If Purchaser fails to fulfill any of the payment deadlines or conditions, Ferrero is entitled to suspend

performance and delivery. Any cost incurred by Ferrero in accordance with such suspension (including storage and handling costs) shall be payable by the Purchaser upon submission of Ferrero's

invoices.

4.3. The time for performance of Ferrero's obligations shall be extended for a period equal to the period of

Purchaser's nonfulfillment of any portion of the payment terms, whether or not Ferrero suspends its

performance, or for such additional time as may be reasonably necessary in the circumstances. If

Purchaser does not amend such failure in the manner and time satisfactory to Ferrero, then Ferrero

may, at its option, terminate the Contract in respect to the unpaid portion of Products that therefore

will not be delivered and/or the relevant work will not be performed.

4.4. In addition to the foregoing, Purchaser shall pay default interest to Ferrero, at the rate provided by the

Italian Legislative Decree 231/2002 or the maximum amount permitted by applicable law, on all

amounts not timely paid in accordance with the Contract.

4.5. If at any time Purchaser's financial condition does not justify continuation of the work to be performed

by Ferrero under the Contract on the agreed terms of payment, Ferrero is entitled to require in advance

full or partial payment or shall be entitled to terminate the Contract. If Purchaser becomes insolvent,

or in the event any proceeding is brought against Purchaser, voluntarily or involuntarily, under any

bankruptcy laws or any insolvency laws, Ferrero shall be entitled to immediately terminate the

Contract.

## **5. Taxes and Duties**

5.1. The price of Products does not include any taxes or duties levied by the taxing authorities of the

country of importation or installation, including property, sales, use, excise, value added, or other

similar taxes, and charges howsoever associated with importation or social insurance. Consequently,

the amount of any such present or future taxes or duties shall be paid directly by Purchaser to the

authority concerned.

5.2. If Ferrero is required by law or otherwise to pay any such levy and/or fines, penalties, or assessments

in the first instance, or as a result of Purchaser's failure to comply with any applicable laws or regulations governing the payment of such levies by Purchaser, the amount of any payment so made

by Ferrero shall be reimbursed by Purchaser to Ferrero upon submission of Ferrero's invoices.

## **6. Activities coordination. Inspection and Testing**

6.1. The Purchaser is required to advise and state in writing about the reference name of the person in

charge of approving activities plan and possible requests of changes from any original project. Such a

person will also be responsible for signing the performances and certificates of performed work or of

acceptance. The Purchaser's person in charge will be able to approve any decision agreed during the

projecting stage which will be binding to the project development. The Purchaser commits that the

person in charge will have all the necessary powers to bind the Purchaser.

6.2. Upon specific request, Purchaser's person in charge will be provided access to Ferrero's facilities for

purposes of obtaining information on production progress, when not subcontracted, determining

status and observing tests and inspections. Such access will be limited to areas concerned with the

Products and shall not include restricted areas where works of a proprietary nature is being conducted.

6.3. When applicable, Purchaser will be advised for final testing of the Products. After written advice from

Ferrero's side that all performances and works concerning the supply are completed, on a date to be

agreed by the parties but, in any case, within 5 (five) working days from written notice, a general check

out of the Products will be carried out to verify that the supply is regularly accomplished, as per

Contract. After this period of time, even without any availability on the Purchaser's side to proceed

with general check out, the Product will be considered as successfully tested.

6.4. When applicable, details on testing plan will be agreed between the parties and the results of testing

will be reported into the "Record of regular processing and completion of supply", signed by both

parties.

6.5. In case the Product is used by the Purchaser before signing the mentioned Record, the Product will be

considered as fully approved and Ferrero is discharged from any liability for any persons/things

related safety matters.

6.6. When applicable, in respect of material functional anomalies found during Product testing Ferrero will

proceed in solving anomalies and a new testing will be planned exclusively on those parts of the

Products that were non-conforming to the specifications; in this case a new Record will report about

the regular processing and completion of the supply.

## **7. Time of delivery**

7.1. The date of delivery indicated in the notice of acceptance is merely indicative and consequently does

not bind Ferrero. However, should a delay in delivery for which Ferrero is liable for fraud or gross

negligence exceed 90 days, the Purchaser shall be entitled to terminate the Contract provided previous

written notice of such intention is given 30 days before its effectiveness.

7.2. A delay due to force majeure (as defined in article 9 hereunder) or to acts or omissions of the Purchaser

shall not be considered as a delay for which Ferrero is liable.

## **8. Terms of delivery**

8.1. Unless otherwise agreed, delivery terms are EX WORKS (INCOTERMS 2020) at Ferrero's facility.

8.2. Ferrero's liability for delivery shall cease and title and all risk of loss or damage shall pass to Purchaser

upon Ferrero making the Products available to Purchaser for collecting before the Ferrero's premises

on the delivery date, regardless of any provision for payment of freight or insurance or the form of

shipping documents.

8.3. Product handled by Ferrero for the Purchaser shall be at Purchaser's risk and expense. The Purchaser

is responsible for packing and loading the Product as well as for their shipment and/or for clearing the

Product for export. All packing, packaging, loading, transportation, export, customs and insurance

costs are and remain the charge of the Purchaser regardless of whether they are anticipated by Ferrero

on behalf and in the name of the Purchaser.

8.4. As an additional service to Purchaser, Ferrero, upon Purchaser's request and Ferrero's written

consent, shall arrange for shipment, on agreed basis, on behalf of Purchaser. Purchaser shall pay

Ferrero for all fees and expenses including, but not limited to, those covering preparation of shipment

documents, freight, storage and warehouse-to-warehouse (including war risk) insurance, upon

submission of Ferrero's invoices. Ferrero shall also apply for any required export license. In

performing such optional services, Ferrero will comply with any reasonable instructions of Purchaser

or, in the absence thereof, shall act according to its best judgment. In acting on Purchaser's behalf

hereunder, save for fraud or gross misconduct, Ferrero shall be without liability on any claim asserted

by Purchaser, notwithstanding the provisions of any other clause. Claims against Ferrero for shortages

or errors in Products delivered must be made within 10 (ten) days after receipt of the Product by

Purchaser and be accompanied by necessary documentation to substantiate the claim. Product may

not be returned by Purchaser without first having received written permission from Ferrero and

agreement reached for the terms to cover such return.

8.5. If any part of the Product cannot be shipped to Purchaser when ready due to any cause not attributable

to Ferrero, Ferrero may ship such Product to storage places; if such Product is placed in storage,

including storage at the facility where manufactured, the following conditions shall apply: (a) title and

all risk of loss or damage shall thereupon pass to Purchaser if it had not already passed; (b) any

amounts otherwise payable to Ferrero upon delivery or shipment shall be payable upon presentation

of Ferrero's invoices and certification of cause for storage; (c) all expenses incurred by Ferrero, such

as for preparation for and placement into storage, handling, inspection, preservation, insurance,

storage, removal charges and any taxes shall be payable by Purchaser upon submission of Ferrero's

invoices; and (d) when conditions permit and upon payment of all amounts due hereunder, Ferrero

shall resume delivery of the Product to the originally agreed point of delivery.

## **9. Force Majeure**

9.1. Ferrero shall not have any liability or be considered to be in breach or default of its obligations under

the Contract to the extent that performance of such obligations is delayed or prevented, directly or

indirectly in full or in part, due to causes beyond its reasonable control including but not limited to: (i)

acts of God, act (or failures to act) of governmental authorities, fires, severe weather conditions,

earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil

unrest, riot, delays in transportation, or car shortages; or (ii) acts (or omissions) of Purchaser including

failure to promptly: (a) provide Ferrero with information and approvals necessary to permit Ferrero

to proceed with work immediately and without interruption, (b) comply with the terms of payment,

or (c) provide Ferrero with such evidence as Ferrero may request that any export or import license or

permit has been issued (if such is the responsibility of Purchaser), (d) provide Ferrero with all parts

or material whose supply is expected from the Purchaser, or (iii) any agreed change in drawings,

technical/functional specifications, like size data of the project (dimensions, productivity data, and

other), or in Purchaser requirements, or (iv) inability on account of causes beyond the reasonable

control of Ferrero to obtain necessary materials, necessary components or services.

9.2. Ferrero shall notify Purchaser of any such delay; the date of delivery or of performance shall be

extended for a period equal to the time lost by reason of delay, plus such additional time as may be

reasonably necessary to overcome the effect of such excusable delay. Ferrero shall notify Purchaser,

as soon as practicable, of the revised delivery date. If Ferrero is delayed by acts or omissions of

Purchaser, or by the prerequisite work of Purchaser or suppliers, Ferrero shall also be entitled to an

equitable price adjustment, to claim damages and to terminate the Contract.

## **10. Subcontract**

Ferrero reserves the right to subcontract the manufacture of Products together with Contract obligations being fully responsible for work completion and Contract obligations.

## **11. Reservation of title**

The Products shall remain the property of Ferrero until it has received full payment of the price and of

any additional sum howsoever due by the Purchaser pursuant to the Contract, notwithstanding their

delivery to the Purchaser. Upon the Purchaser's failure to make payment by any due date, Ferrero may

refuse delivery or retake possession of the Products also after delivery.

## **12. Warranty. Limitation of liability.**

12.1. Ferrero is responsible for ensuring that the Products are properly manufactured, provided however

that they are operated and maintained in accordance with the site specifications, installation instructions, operating instructions and maintenance requirements described in the Product documentation.

12.2. Unless otherwise agreed by the parties and explicitly advised, in writing, in the Contract, Ferrero will

provide on Products one year warranty as of delivery date. The warranty will cover repairing or

replacement of material or parts, devices and installations that may have been manufactured or

installed with original faults.

12.3. If the Product delivered hereunder does not meet the above warranties, Purchaser shall within the

warranty period notify Ferrero in writing, with full details on the nature and circumstances of the

failure, within 10 (ten) days from discovering the fault, under penalty of forfeiture, and make the

Product available promptly for correction.

12.4. Ferrero shall thereupon correct any defect by, at its option, (i) repairing the defective Product or (ii)

by making available necessary replacement parts, at its own cost.

12.5. The Purchaser shall be responsible for payment of any travelling, lodging and transportation expenses

to site, including customs duties or similar levies which may be assessed as a result of the shipment of

any replacement parts. Ferrero shall not be committed or responsible for removal or replacement of

structures or other parts of the site not furnished by Ferrero for purposes of gaining access to Products.

The technical intervention will be carried out as quickly as possible, according to Ferrero personnel

and material availability.

12.6. Ferrero does not warrant its Products or any repaired or replacement parts against normal wear and

tear. The warranties and remedies set forth herein are further conditioned upon (i) the proper storage,

installation, operation, use and maintenance of the Product and conformance with the operation

instruction manuals (including revisions thereto) provided by Ferrero, as applicable, and (ii) repair or

modification pursuant to Ferrero's instructions or approval.

12.7. The guarantee does not cover any consequences, direct or indirect, resulting from the failure of the

Product supplied by Ferrero. In no event, whether as a result of warranty, tort (including negligence),

strict liability, indemnity, or otherwise, shall Ferrero be liable for loss of profit or revenues, loss of

contract or opportunities, loss of use of the Product or any associated product or services, cost of

capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims

of Purchaser or Purchaser's customers for damages or costs related to the cleanup, removal, release

or threatened release, remediation or disposal of any response to any hazardous material.

Notwithstanding anything to the contrary, Ferrero shall not be responsible for any special, consequential, incidental, indirect, exemplary, punitive or speculative damages.

**12.8. In any case, the total liability of Ferrero, on all claims of any kind, warranty, tort (including**

**negligence), strict liability, indemnity, or otherwise, arising out of the performance or breach**

**of the Contract or use of any Product shall not exceed 10% of the relevant price allocable to the**

**Products.**

12.9. For the purposes of this Article, the term "Ferrero" shall mean Ferrero, its affiliates, subcontractors

and suppliers of any tier, and their respective representatives, agents and employees, whether individually or collectively.

**12.10. The preceding paragraphs constitute the whole and only guarantee and the exclusive**

**remedies for all claims based on failure of or defect in the Product whether the failure or defects**

**arises before or during the warranty period and whether a claim is based on the Contract.**

### **13. Applicable law. Arbitration**

13.1. The Contract is governed by and shall be interpreted in accordance with the laws of Italy.

13.2. If, at any time, a question or controversy shall arise between the parties related to the Contract, such

question or controversy shall be finally settled to a final and binding resolution by arbitration in

accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) in force.

13.3. The arbitration shall be conducted in the Italian language and place of arbitration shall be Turin (Italy).

The written decision of the arbitrators shall be final and binding upon both parties, and neither party

shall seek recourse to a law court or other authorities to appeal for revisions of such decision.

Reasonable expenses of the arbitration shall be borne in accordance with the decision of the arbitration.

### **14. Proprietary Information. Non-disclosure.**

14.1. Each Party remains owner of all of its intellectual property rights existing prior to the signature of the

Contract or developed outside the scope of the Contract. No provision of this General Conditions of

Sale shall be interpreted as constituting the explicit granting by one party of license of its rights to the

other Party.

14.2. All results and any intellectual property rights related thereto, patentable or not, including but not

limited to the whole Products and their parts, hardware, software, process design, test procedure and

documents generated by Ferrero during the performance of the Contract shall be and remain the sole

and exclusive property of Ferrero.

14.3. Ferrero guarantees that all drawings and technical/functional specifications supplied by the Purchaser

to detail the offer and, at a later stage, during the project and the manufacture of the Product, are

considered confidential and will therefore not be given or disclosed to a third party.

14.4. On the other side, all the information, drawings, technical/functional documents which are disclosed

by Ferrero to the Purchaser under the Contract, is disclosed under a confidentiality constraint. The

parties agree (i) to treat such information as confidential, (ii) to restrict the use of such information to

matters relating to Ferrero's performance of the Contract, and (iii) to restrict access to such information to employees and agents whose access is necessary in the implementation of the Contract.

Confidential information will not be reproduced without the owner's prior written consent, and all

copies of written information will be returned to the owner upon its request except to the extent that

such information is to be retained by Purchaser pursuant to the Contract.

14.5. The foregoing restrictions do not apply to information which: (i) is contained in a printed publication

which was released to the public prior to the date of the Contract; (ii) is, or becomes, publicly known

otherwise than through a wrongful act of the other party, its employees, or agents; (iii) is in possession

of the other party, its employees, or agents prior to receipt, provided that the person or persons

providing the same have not had access to the information from the owner; (iv) is furnished to others

by the owner without restrictions similar to those herein on the right of the receiving party to use or

disclose; or (v) is approved in writing for disclosure to a third party.

## **15. General Clauses**

15.1. The Purchaser shall not assign the Contract to any other entity without the prior written consent of

Ferrero.

15.2. The delegation or assignment by Purchaser of any or all of its duties or rights under the Contract

without Ferrero's prior written consent shall be null and void.

15.3. The Contract represents the entire agreement between the parties and no modification, amendment,

rescission, waiver or other change shall be binding on either party unless assented to in writing by the

parties' authorized representatives. Any oral or written representation, warranty, course of dealing or

trade usage not contained or reference herein shall not be binding on either party.

15.4. The invalidity in whole or in part of any part or clause of the Contract shall not affect the validity of the

remainder of the Contract.

15.5. It is understood that Ferrero has the right to make any changes in design and add improvements to its

product or services at any time without incurring any obligations to install, at Ferrero's expense, the

same on the Products.

15.6. Failure by Ferrero at any time to exercise any right, power or privilege under the Contract and any

delay in exercising any right, power or privilege shall not be construed or interpreted as waiving any

rights of Ferrero nor prevent it from subsequently exercising such right, power or privilege, nor from

enforcing its remedies for breaches thereof.

## **16. Handling of personal data**

16.1. The parties commit to handle any personal data in accordance with the EU Regulation 2016/679

("GDPR" - General Data Protection Regulation). Each party declares to be aware of the principles and

obligations arising from the GDPR and hereby engages to comply with and follow up on any request

from the other party regarding compliance arising from the aforementioned legislation.

On behalf of Ferrero Spa On behalf of the Purchaser

Place, \_\_\_\_\_

Place, \_\_\_\_\_

Date, \_\_\_\_\_

Date, \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

In accordance to articles 1341 and 1342 of the Italian civil code, the Purchaser agrees to accept the following

articles: 3. Orders; 4. Price and Conditions of payment; 5. Taxes and Duties; 6. Activities coordination.

Inspection and Testing; 7. Time of delivery; 8. Terms of delivery; 10. Subcontract; 11. Reservation of title; 12.

Warranty. Limitation of liability; 13. Applicable law. Arbitration; 14. Proprietary Information. Non disclosure.

On behalf of the Purchaser

Place, \_\_\_\_\_

Date, \_\_\_\_\_

Signature \_\_\_\_\_