



Varvel SpA

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U.L. - Via della Solidarietà, No. 29 - 40056 Crespellano (BO) - Italy

## MANUFACTURER'S GENERAL CONDITIONS OF SALE

### 1. Applicability of Conditions

1.1. The general conditions of sale hereto (hereinafter referred to as the "Conditions") form an integral part of all export sales contracts of products manufactured by VARVEL SpA, Via 2 Agosto 1980 No 9 - 40056 Crespellano, Bologna, Italy, Ph. +39.051.6721.811 - Fax +39.051.6721.825 (hereinafter referred to as the "Products" and the "Manufacturer").

Except as otherwise expressly provided in writing and signed by the Manufacturer, these Conditions shall be the only rules governing such sales.

1.2. All offers, acceptance of orders and deliveries by the Manufacturer shall be made pursuant to the Conditions hereto, except as otherwise expressly provided in a writing signed by the Manufacturer; in any event, acceptance of such Products sent by the Manufacturer shall imply acceptance by the buyer of the Conditions hereto.

### 2. Execution and subject matter of the contract

2.1. The contract shall be deemed to have been entered into at the moment in which the ordering party becomes aware of the Manufacturer's acceptance, or in the absence of said occurrence, at the time of delivery of the Products to the ordering party. Orders may be accepted only if signed by the buyer and provided that said orders contain the technical data necessary to identify the specifications of the ordered Products.

2.2. Orders which are not confirmed in writing shall not be deemed accepted unless the orders are duly filled by the Manufacturer.

2.3. Partial delivery of Products ordered shall not imply acceptance of the whole order, but only acceptance of the Products actually delivered.

2.4. In any and all cases, the execution of the contract of sale shall be deemed to have taken place at the Manufacturer's headquarters.

### 3. Delivery of Products

3.1. All delivery terms given shall be deemed to be approximate only and non-binding. The buyer, by acceptance of a late delivery, waives any and all rights relating to the delay. The delivery terms, in any case, shall run from the date of receipt by the Manufacturer of the final order specifications supplied by the ordering party. The Manufacturer expressly reserves the right to make partial deliveries of any order.

3.2. The Products shall be delivered "Ex Works" [said term, as well as any alternative delivery term that may be agreed upon in writing, shall have the meaning given to it in the most recent edition of the ICC Incoterms (2000)]. In any case, from the moment in which the Products are delivered by the Manufacturer to the carrier or the forwarding agent, they shall be transported at the risk and peril of the buyer. The Manufacturer shall not enter into any transportation agreement and shall not insure the Products to be shipped, except upon the express order of and at the expense of the buyer.

3.3. The buyer agrees to collect the Products or to accept delivery thereof as soon as it receives notice that the Products are ready and at its disposal and, in any event, within 10 (ten) days of the date of said notice. Following the expiration of said 10 (ten) day period, the Manufacturer shall under no circumstances be responsible for the custody and insurance of the Products. In the event that, due to lack of space, it is not possible for the products to be held in the Manufacturer's warehouse, then they may be deposited in other storage depots at the buyer's sole risk, peril and expense.

3.4. In any case, it is understood that the payment terms shall run from the date of the notice that the Products are ready and at the buyer's disposal.

### 4. Claims; Warranty

4.1. The Manufacturer warrants that the Products supplied shall be of good quality, but expressly excludes from said warranty those defects that may arise as a result of the incorrect, inadequate or improper use, assembly and/or installation of the Products. The warranty shall have a limited duration of 1 (one) year following the date of delivery of the Products.

4.2. Any claims relating to the non-conformity of or any visible defects in the Products must be made within 8 (eight) days following the date of delivery of said Products and shall be deemed waived if not made within that time. Any claims relating to any possible hidden defects must be made within no more than 8 (eight) days following the date of their discovery.

4.3. If the buyer fails to give such notices, the buyer shall be deemed to have waived any claims for the defects or non-conformity of the Products.

4.4. In accordance with the terms of Article 4.1 above, for a period of 1 (one) year following the date of delivery of the Products, the Manufacturer agrees to repair or replace defective Product parts free of charge, at its place of business or at any other place indicated by it. The buyer shall send, at its own expense, the parts or Products to be repaired and the Manufacturer shall examine said parts or Products to determine whether they are defective and whether the Manufacturer is responsible for the defect; in such case, and, at its sole discretion, the Manufacturer shall repair or replace said parts or Products and shall deliver said parts or Products to the Buyer "Ex Works" (ICC Incoterms 2000). Any other compensation or indemnity is expressly excluded.

4.5. In any event, the warranty shall be rendered void and invalid if: a) the prescribed type and quality of lubricant is not used; b) the Product is caused to function in excess of the recommended limits; c) the Product is used incorrectly, or d) the Product is tampered with.

4.6. It is understood that any possible verification or repair of the Products or parts thereof by the Manufacturer, either during or subsequent to the warranty period, shall under no circumstances give rise to a fresh or extended warranty period.

### 5. Prices and Payment Terms

5.1. The Product prices shall be those indicated in the Manufacturer's price list effective at the time of the delivery of the Products. If any delay in delivery of the Products occurs through the fault of the buyer and if the Manufacturer's list prices have increased between the time at which the offer was made and the time of delivery of the Products, the buyer shall pay the increased prices.

5.2. Except as otherwise agreed upon in writing, payments for the Products must be made prior to the anticipated date of delivery of the Products by means of bank transfer (to the bank and account number indicated in writing by the Manufacturer from time to time) or by means of an irrevocable letter of credit, confirmed by a primary Italian bank, in compliance with publication 500 of the International Chamber of Commerce, as updated from time to time, and valid for at least 30 days from the anticipated date of delivery of the Products in question.

5.3. In the event of late payment, in addition to compensation for any damage suffered by the Manufacturer, the Manufacturer shall be entitled to receive delay payment interest at a rate equal to the then current Euro LIBOR rate on loans for a 12 (twelve) month period plus 5% (five percent), without being obliged to give the buyer any notice of default. It is understood that, in the event of late payment, the buyer shall lose the benefit of Article 1186 of the Italian Civil Code and the Manufacturer shall be entitled to require the immediate payment of the total purchase price of all Products ordered by the buyer, even if undelivered, or the providing of sufficient guarantees to cover all such sums.

5.4. If the delay in payment exceeds 20 (twenty) days, the Manufacturer shall be entitled to terminate the contract in respect of the Products not yet delivered, upon written notice of its election to do so, without prejudice to the Manufacturer's right to compensation for any damages suffered. It is understood that the buyer may not make any claim against the Manufacturer as a result of the Manufacturer's termination of the contract.

5.5. If the buyer fails timely to meet even one of the payment deadlines set in respect of an earlier order which the Manufacturer has already filled, then even if the contract of sale has already been entered into within the meaning of Article 2 above, the Manufacturer shall be entitled, without any formalities including having to notify the Buyer of such default:

- not to fill any further order and to refuse to deliver the Products;
- or alternatively, to delay delivery of the Products ordered until such time as all previously outstanding debts owed by the buyer to the Manufacturer have been paid.

### 6. Manufacturer's right to terminate the contract

6.1. The Manufacturer shall be entitled to terminate the contract at any time, at its sole discretion, in the event that the buyer encounters technical or supply difficulties and if any change in the buyer's economic condition occurs, including any change in the buyer's solvency and/or liquidity (in the latter case, the Manufacturer

reserves the right, at its sole discretion to modify the payment terms originally established in respect of the order in question).

**7. Retention of Title**

7.1. Except as otherwise provided by applicable rule of law, which rule of law is absolute and may not be contracted out of or varied by contract, title to the Products shall be transferred to the buyer only upon payment in full of the sale price of said Products. The buyer shall inform third parties of the contents of this clause; the retention of title by the Manufacturer remains valid in relation to third parties where the law so permits.

**8. Product checks; Technical rules; Manufacturer's responsibility**

8.1. All Products are checked by the Manufacturer before their delivery. Should the Buyer wish to carry out any particular check, it shall be done at the Buyer's own risk and expense. Such check shall have to be requested by the buyer within 8 (eight) days following the date of the Manufacturer's notice that the Products are ready and at the buyer's disposal.

8.2. With regard to the characteristics and specifications of the Products, the Manufacturer shall comply with the relevant laws and technical rules in force in Italy, and the buyer shall assume the risk of any difference between the relevant provisions in force in Italy and the provisions of the countries in which the Products have been resold; and the buyer shall duly indemnify and hold the Manufacturer harmless from any possible claims or actions brought by any third party in relation thereto.

8.3. The Manufacturer shall not be deemed liable for any damage to any persons or property caused by the Products supplied, except in case of serious and proven negligence in the manufacture of the Products; further, in no event shall the Manufacturer be deemed liable for any indirect or consequential damages, including, but not by way of limitation, loss of profit.

With regard to any possible legal action brought by third parties in connection with the Products supplied, upon the Manufacturer's request, the Buyer shall take all necessary steps in relation to such legal action.

**9. Force majeure and undue hardship**

9.1. The Manufacturer shall not be held responsible to the buyer for any failure to perform, including late delivery or failure to deliver, which failure to perform is caused by occurrences beyond the Manufacturer's reasonable control, including, but not limited to, late delivery or non-delivery of manufacturing materials by suppliers, strikes or other industrial action, suspension of or difficulties in transportation.

9.2. In the event that, due to any reason which was not foreseeable at the time the contract was entered into, and which reason is such as to render the Manufacturer's obligations excessively onerous in relation to the contractual obligations originally agreed upon and, in any event, is such as to increase the Manufacturer's obligations by more than 20% (twenty percent) compared to the value of such obligations as originally foreseen, then the Manufacturer shall be entitled to request an appropriate revision of the contractual terms or, in the event that the parties are unable to reach an agreement as regards such a revision, the Manufacturer may terminate the contract.

**10. Governing law; Arbitration**

10.1. The contracts of sale entered into by the Manufacturer shall be governed by Italian law, and in particular, by the 1980 - United Nations Convention on Contracts for the International Sale of Goods (CISG), where not contracted out of by these Conditions or by the parties in writing.

10.2. Any dispute that should arise between The Manufacturer and The Buyer in relation to the interpretation and/or to the execution and/or to the validity and/or to the efficacy of the general conditions of sale herein will be settled by arbitration in accordance with art. 806 and succ. of the Italian Code of Civil Procedure, by a panel composed of 3 arbitrators, two of which must be nominated by each of the Parties. The two arbitrators already designated by the two Parties must mutually agree upon the nomination of the third arbitrator, who will act as President of the panel.

Should the two arbitrators designated by the Parties fail to reach such agreement, the President of the Court of Bologna shall nominate the third arbitrator upon the diligent Party's request.

Once an arbitrator has been nominated, notification must be sent by registered mail to the other party. Should the party fail to nominate an arbitrator after a period of 15 (fifteen) days from the day on which the notification was received, the President of the Court of Bologna shall make the nomination upon motion by the interested party.

During the arbitration procedure the chosen arbitrators shall act in accordance with the rules of the Code of Civil Procedure e shall apply Italian law. The arbitrators shall convey the award to each of the contending Parties in accordance with the terms and conditions of art. 825 of the Code of the Civil Procedure – on or before 180 (one hundred and eighty) days following the ultimate arbitrator's acceptance of his nomination, aside from exceptions to the law and aside from an eventual postponement authorized by all Parties. The losing party will bear the arbitration expenses. The arbitration shall take place in Bologna

Date \_\_\_\_\_

The buyer \_\_\_\_\_

The buyer hereby represents and warrants that it has read and understands the above General Conditions of Sale of the Manufacturer which govern this order and all contracts of sale by the Manufacturer. In accordance with Article 1341-2 of the Italian Civil Code, the buyer hereby accepts all the Conditions hereto and specifically the following clauses:

1. Applicability of Conditions; 2. Execution and subject matter of the contract; 3. Delivery of Products; 4. Claims; Warranty; 5. Prices and Payment Terms; 6. Manufacturer's right to terminate contract; 7. Retention of Title; 8. Product checks, Technical rules, Manufacturer's responsibility; 9. Force majeure, Undue hardship; 10. Governing law; Arbitration.

Date \_\_\_\_\_

The buyer \_\_\_\_\_