

This Contract comprises the Sales Confirmation overleaf and these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which Buyer purports to apply under any purchase order, order confirmation, specification or other document). No terms or conditions endorsed on, delivered with or contained in Buyer's purchase order, order confirmation, specification or other document shall form part of this Contract. Any variation of these terms and conditions, and any representation about the goods, shall be ineffective unless expressly agreed in writing and signed by an authorised representative of Seller. Each order or acceptance of a quotation for goods by Buyer from Seller shall be deemed to be an offer by Buyer to buy goods subject to these terms and conditions. Without prejudice to the previous sentence, acceptance of the goods, payment or any other performance by Buyer constitutes acceptance of these terms and conditions. No order placed by Buyer shall be deemed to be accepted by Seller until Seller issues a Sales Confirmation or (if earlier) Seller delivers the goods to Buyer. Buyer shall ensure that the terms of its order are complete and accurate.

## TERMS AND CONDITIONS

These terms and conditions shall apply, except to the extent that any contrary provisions are specified overleaf:

- Quantity:** Good delivery shall be constituted by the delivery of the quantity specified overleaf plus or minus ten percent at Seller's option, or where the governing law is *German* law, plus or minus such difference in quantity that is customarily acceptable. If a quantity less than specified overleaf is delivered, Buyer shall pay only for the quantity actually delivered.
- Shipment:** Delivery of the goods to a carrier in accordance with this Contract and issuance by such carrier to Seller of a bill of lading or similar document shall be complete shipment and delivery to Buyer of the goods covered thereby. The date of the bill of lading or other document shall be conclusive proof of the date of shipment and delivery. Seller's responsibility for the goods terminates upon such shipment and all risk in the goods shall thereupon pass to Buyer. Ten days' grace shall be allowed for shipment earlier or later than the date agreed upon by Seller and Buyer (the "parties"). If the goods are shipped in more than one lot, each lot shall be deemed to be a separate sale or contract. If this Contract omits any particulars relating to the manner of shipment or if Buyer is to give Seller instructions relating to the manner of shipment but Seller has not received instructions within a reasonable time prior to shipment, such particulars or the manner of shipment shall be arranged by Seller in Seller's absolute discretion.
- Payment:** If no payment terms are specified overleaf, Buyer shall within 30 days of the goods' delivery pay the full amount of the price and any other sums payable and in the currency specified overleaf (the "Contract Price"). Except where the governing law is *German* law, Buyer shall not be entitled to offset against the Contract Price in any manner. The Contract Price does not include VAT or other taxes and duties. If payment is required to be made by letter of credit such letter of credit shall: be an irrevocable, confirmed letter of credit without recourse, in favour of and satisfactory to Seller; strictly comply with the requirements of this Contract; cover the full Contract Price; be established through a prime bank reasonably satisfactory to Seller; be issued immediately after the date of this Contract as specified overleaf (the "Contract Date"); be negotiable on sight; be extended by Buyer if delivery of the goods is delayed for any reason; be valid for negotiation of the relative draft for at least 15 days after the last day of the month of shipment; and authorise multiple drawings against multiple deliveries. If a letter of credit is dishonoured, Buyer shall make payment directly to Seller. If Seller has reason to suspect that Buyer is likely to fail to satisfy any payment term of this or any other contract with Seller, Seller at Buyer's expense and risk may re-sell or may hold all or any part of the goods not already paid for by Buyer, cancel all or any part of this Contract and any other contract with Buyer and/or claim damages resulting from such

breach. Buyer shall bear any bank charges in connection with payment. The time for payment or, if applicable, the opening of a letter of credit, shall be of the essence. Other than for payments, time shall not be of the essence unless otherwise stated. In the event of late payment of any amount due hereunder, Seller shall, in addition to any other remedy and without any prior notice, be entitled to interest on a daily basis from the due date for payment (“Due Date”) to the actual date of payment (before and after judgement) at the rate provided by statute or (if none is so provided) 2% per annum above LIBOR of a prime bank in London as at the Due Date.

4. **Retention of Title:** (1) Seller retains title to the goods under this Contract or, except where the governing law is *Italian* law, any other contract between Buyer and Seller until full payment of the price of all goods. Subject to this clause 4, Buyer shall segregate the delivered goods from other goods, post signs to indicate that the goods are owned by Seller and keep the goods in good condition and insured against all risks for not less than the Contract Price. Except where the governing law is *English* law or *Italian* law, as a general guaranty, Seller also retains title to the sold goods until all current and future claims arising from this Contract and any existing business relationship (secured claims) have been fully settled, and if the marketable value of the securities exceeds Seller’s claims by more than 10%, upon Buyer’s request, Seller shall release securities at Seller’s option. (2) Except where the governing law is *English* law, in the case of a breach of contract by Buyer, Seller is entitled to cancel this Contract and reclaim the goods at Buyer’s expense on the basis of the retention of title and the cancellation unless applicable statutory law obliges Seller to set an appropriate grace period to remediate the breach of contract. (3) Buyer is entitled to resell and/or process the retention goods in the proper course of business. In this case, except where the governing law is *English* law or *Italian* law, the following provisions shall apply additionally: (a) The retention of title covers products manufactured from Seller’s goods through processing, blending or combining at their full value, in which case Seller shall be deemed the manufacturer of the manufactured products. If any person who is not a party to this Contract (a “third party”) has retained title to its goods in case of processing, blending or combining, Seller shall acquire joint ownership at a ratio of the invoiced value of the processed, blended or combined goods. Furthermore, the provisions regarding the retention goods shall also apply to the manufactured products. (b) Buyer hereby transfers title to any claims against third parties arising from the resale of the goods or the manufactured product in their entirety or at the ratio of Seller’s joint ownership according to paragraph (a) above to Seller by way of security. Seller accepts this transfer. (c) Buyer shall remain entitled to collect the claim against a third party alongside with Seller. Seller undertakes not to collect the claim as long as Buyer meets its payment obligations vis-à-vis Seller, is not in default of payment, has not made an application for the initiation of insolvency or similar proceedings and does not lack financial capacity in other respects. If this is however the case, Seller is entitled to ask Buyer to disclose any transferred claims as well as the debtors to Seller, to provide Seller with all information necessary to collect such claims, to hand over the related documents and to inform the debtors (third parties) of the transfer by way of security to Seller.
5. **Insurance:** Insurance is to be effected by Seller and at Seller’s cost only in the case of a CIF or a CIP contract and shall be effected at 110% of the invoice amount and on the basis of the Institute Cargo Clauses (A) including SRCC (strike, riots and civil commotion) and War (except where the goods are delivered by inland transit in which case War shall not be included). Such insurance shall be subject to specific exclusions as Seller’s insurer shall reasonably determine. Any other insurance shall be arranged by Seller only if agreed by Seller at the specific request of and for the account of Buyer.
6. **Credit:** If any event affects or is, in the sole opinion of Seller, likely to affect Buyer’s creditworthiness, including delay in making any payment, and Seller has a legitimate concern about Buyer’s capacity to make any payment under this Contract on the Due Date,

Seller or its factor, in its sole discretion, may at any time modify or cancel the credit of Buyer both as to time and amount, and may demand payment in cash before shipment or delivery of the whole or any part of the goods.

7. **Claim:** (1) Buyer shall, upon delivery to Buyer or to a third party designated by it, carefully inspect the goods. The goods shall be deemed to be accepted and no claim may be made by Buyer if Seller does not receive a written notice of defect immediately (i.e. without undue delay) after the delivery of the goods (in respect of apparent defects) or after the discovery of such defect (in respect of latent defects), provided the defect would have been identifiable during such an inspection or on ordinary use. (2) Seller or its agent shall have the right to inspect and/or test the goods and, if in its reasonable opinion the notice is without merit, reject the notice. (3) If a claim is made in respect of defective goods and a notice is received in accordance with clause 7(1) and not rejected pursuant to clause 7(2), Seller shall, at its election within 30 days after receipt of the claim, either repair or replace the defective goods in full satisfaction of such claim and Seller shall have no further liability in connection with the claim. (4) Except where the governing law is *German* law: (a) Seller's maximum liability for any failure to repair or replace the goods in accordance with this clause shall be the Contract Price as paid by Buyer for those defective goods; and (b) the sole remedy of Buyer shall be in damages which shall be subject to the exclusions and limitations in clause 8.

8. **Liability of Seller:**

(A) Where the governing law is other than *German* law: (1) Subject (except as stated in clause 7(4)(b)) to clause 7, this clause 8 sets out the entire financial liability of Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to Buyer in respect of: (a) any breach of this Contract, including any delay or failure to deliver the goods; (b) any use made or resale by Buyer of any of the goods, or of any product incorporating any of the goods; and (c) any representation, statement or tortious act or omission including negligence and any breach of statutory duty, arising under or in connection with this Contract. (2) All warranties, conditions and other terms implied by statute, trade custom or common law are, to the fullest extent permitted by applicable law, excluded from this Contract. (3) Nothing in this Contract excludes or limits the liability of Seller: (a) for death or personal injury caused by Seller's negligence; or (b) for any matter which it would be illegal under applicable law for Seller to exclude or limit or attempt to exclude or limit its liability; or (c) for fraud or fraudulent misrepresentation; or (d) where the governing law is *Italian* law, for willful misconduct, gross negligence or for cases in which Seller's behaviour violates rules of public policy. (4) Subject to clauses 8(A)(2) and (3) and 8(B)(3): (a) Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with this Contract is limited to the Contract Price; and (b) Seller shall not be liable to Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct or consequential, or for any indirect or consequential loss which arises out of or in connection with this Contract. (5) Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Seller which is not set out in this Contract.

(B) Where the governing law is *German* law: Seller's liability shall be limited according to the following provisions of this clause 8:

(1) Seller shall not be liable in the case of ordinary negligence of its legal representatives, employees and other agents if there is no violation of the essential obligations.

(2) If Seller is liable on the merits according to clause 8(B)(1) with regard to damages, the liability shall be limited to damage that was foreseeable by Seller at the moment of the conclusion of this Contract or that which would have been foreseeable if usual due care and diligence had been exercised. Moreover, indirect damage and consequential damage

resulting from defects of the sold goods are only indemnifiable if such damage is typically to be anticipated in the course of the ordinary use of the sold goods.

(3) If liability is due to ordinary negligence, Seller's obligation to indemnify for damage to property and any other financial damage resulting therefrom shall be limited to the amount covered by product liability insurance or third party liability insurance even if essential obligations have been violated.

(4) The exclusions and limitations regarding liability that are detailed above apply to the same extent to any of Seller's legal representatives, employees and other agents.

(5) If Seller provides technical information or advice and if this technical information and advice is not part of the owed performances contractually agreed upon, they shall be provided free of charge and all liability of Seller shall be excluded.

(6) The restrictions of this clause 8 shall not apply to any liability of Seller due to willful conduct or due to damage arising out of death, injury to body or health or where a restriction by applicable law is excluded.

9. **Force Majeure:** Seller's performance hereunder is subject to and Seller shall have no liability for failure or delay in performance arising from any event, circumstance or cause beyond Seller's (or its supplier's) control (whether or not now contemplated by either party) (a "Force Majeure Event"), including: war or armed conflict, civil unrest, piracy, terrorism, violence or the threat of any such event; labour disputes; adverse weather; natural events or disasters; explosion, fire or accidental loss or damage; shortage or failure of transport, infrastructure or utilities; any law or action by a government or public authority including sanctions, export or import restrictions or detention of goods; a refusal of or failure to issue any licence consent or approval; and non-performance by third parties. If Seller is prevented or delayed from performing any of its obligations under this Contract by a Force Majeure Event, Seller may, at its election and without liability to Buyer by notice to Buyer cancel all or any portion of this Contract affected by the Force Majeure Event, or delay performance of any affected obligation under this Contract until a reasonable time after the Force Majeure Event shall have ended and/or for a period equal to the duration of the Force Majeure Event. Seller shall make reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations and after the end of the Force Majeure Event shall notify Buyer that performance of its obligations will be resumed.
10. **Intellectual Property:** Buyer shall immediately notify Seller of any claim made or threatened for infringement of any intellectual property right of any third party resulting from the exportation, possession, use or resale of any of the goods in any country.
11. **Breach By Buyer:** If: Buyer fails to carry out or is in breach of any term or condition of this Contract and/or any other contract with Seller; Buyer is or becomes insolvent or unable to pay its debts as they fall due; or Buyer is subject to bankruptcy, insolvency or reorganisation proceedings, or is dissolved or liquidated, whether voluntarily or involuntarily, or a receiver or trustee is appointed for all or a substantial part of Buyer's assets, or Buyer makes an assignment for the benefit of creditors, or any other proceedings analogous in nature or effect are instituted by or against Buyer; then Seller may without prejudice to any right or claim of Seller cancel all or any part of this Contract and/or any other contract with Buyer; and/or resell the goods or hold the goods at Buyer's expense and risk and/or postpone the shipment of the goods or stop the goods in transit; provided, however, that Seller's election of any of the latter remedies shall not preclude Seller's later right to cancel all or any part of this Contract and/or any other contract with Buyer as provided above. In any such case, any unpaid portion of the contract price under this or any other contract with Buyer and any other sums payable shall without further notice become immediately due and payable and Buyer shall reimburse Seller for any loss, damage and expense incurred directly or indirectly as a result.

12. **Construction:** The meaning of any term used herein and the obligations of both parties shall, to the extent applicable and provided the context does not otherwise require, be determined in accordance with the Uniform Customs and Practice for Documentary Credit and (to the extent that the Incoterms are expressed overleaf) the Incoterms adopted by the International Chamber of Commerce and in effect on the Contract Date. In the event of any inconsistency between these terms and conditions and the Incoterms or UCP, the latter shall prevail.
13. **Governing law and Jurisdiction:** (1) This Contract and any non-contractual disputes or claims arising from it shall be governed by the laws of the country of Seller's address shown overleaf (and the UN Convention on the International Sale of Goods shall be excluded). No exit from or accession to the EU shall entitle a party to claim force majeure or terminate this Contract. (2) Buyer shall submit any claim against Seller to the exclusive jurisdiction of the court of the city or, where more applicable, the country of Seller's address shown overleaf. For the exclusive benefit of Seller, Seller may at its sole discretion take action against Buyer in any competent court of the place of Seller's address shown overleaf, and/or in any competent court of the place of performance of this Contract and/or in any competent court of the place where Buyer has its main assets.
14. **Miscellaneous:** (1) No one other than a party to this Contract shall have the right to enforce its terms notwithstanding that any such term of this Contract may purport to confer, or may be construed as conferring, any benefit on such third party and irrespective of whether such third party is identified in this Contract. (2) No failure to exercise, nor any delay or omission by Seller in exercising, any right, power or remedy provided under this Contract or by law shall waive that or any other right or remedy. (3) Any notice given to a party under or in connection with this Contract shall be in writing and shall be delivered by hand or by pre-paid first class post or other next day delivery service at its registered office or principal place of business. This clause does not apply to the service of any proceedings or other documents in any legal action. (4) If any clause or any part of any clause of this Contract is or becomes invalid, illegal or unenforceable for any reason under any applicable law, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. Where modification is not possible, it shall be deemed deleted. Any modification or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this Contract. (5) A phrase or list beginning with "including" is for illustration only and does not limit the generality or extent of any preceding word(s) or phrase. (6) Neither party may assign the benefit of or sub-contract its obligations under this Contract to a third party without the other party's prior written consent. (7) This Contract constitutes the entire Contract and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations between the parties, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.
15. **Compliance with policies:** Buyer shall comply with Seller's policies displayed at <http://europe.marubeni.com/policies/>.