

TERMS AND CONDITIONS OF SALE OF TREATT PLC AND ITS AFFILIATES - NORTH AMERICA

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1. Definitions and Interpretation

- 1.1 In these Conditions the following definitions apply: (i) **"the Seller"** means Treatt USA, Inc. and/or any affiliates as set out in the order, (ii) **"the Buyer"** means the person, firm or company purchasing the Goods as set out in the order, (iii) **"the Goods"** means the goods or materials, which shall be the subject of the Contract between the Seller and the Buyer, (iv) **"Contract"** means the agreement between the Seller and the Buyer for the sale and purchase of Goods pursuant to clause 3.2, (v) **"Loss"** means any loss, damage, liability, cost, charge or expense (including any costs of recovery), and (vi) **"the Incoterms"** means Incoterms® 2020 published by the International Chamber of Commerce.
- 1.2 In these Conditions, unless the context requires otherwise: (i) any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions; (ii) a reference to a "party" includes that party's personal representatives, successors and permitted assigns; (iii) any words that follow "include", "includes", "including", "in particular" or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; (iv) a reference to "writing" or "written" includes any method of reproducing words in a legible and non-transitory form; and (v) a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and a reference to legislation includes all subordinate legislation made from time to time under that legislation.

2. Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, specification or other document, shall form part of the Contract except to the extent that Seller otherwise agrees in writing.
- 2.3 No variation of these Conditions or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Seller.

3. Orders

- 3.1 All quotations and tenders given by the Seller are indicative only and do not constitute an offer capable of acceptance so as to give rise to a binding contract. The Buyer shall offer to purchase Goods by placing an order with the Seller. The Seller may accept or reject an order at its discretion and no order shall be binding on the Seller unless and until it is accepted by the Seller's confirmation of order.
- 3.2 Each confirmed order shall constitute a separate contract subject to the terms included in the Seller's confirmation of order, these Conditions, any packaging statement or other document agreed by the parties in writing (**"Contract"**). If there is a conflict between the terms of the Contract, a term contained in a document listed earlier in this clause shall prevail over one contained in a document listed later in this clause. Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 3.3 If the Buyer cancels an order which has been accepted by the Seller, the Buyer shall indemnify the Seller in full against all Loss incurred by the Seller as a result of the cancellation.

4. Price

- 4.1 The price for the Goods shall be set out in the Seller's confirmation of order (**"Price"**). The Seller will not be bound by any previous quotation or price charged. Where the Price is different to the price quoted or the price contained in the Buyer's order the Buyer shall be deemed to accept the price variation unless rejected by the Buyer within 5 working days of receipt.
- 4.2 Unless otherwise stated by the Seller in writing the Price does not include value added tax or any other similar sales or fiscal tax applying to the sale of the Goods. If any delivery or supply of the Goods is delayed at the Buyer's request or as a result of the Buyer's default including the delay or failure to give the Seller adequate delivery instructions, the Seller may review the Price at the date of actual delivery or supply.
- 4.3 Where a Contract is for a period greater than 3 months and the price of the raw materials required in connection with the delivery or supply of the Goods increase or is anticipated to increase by more than 5% (as reasonably determined by the Seller) from when the Price was agreed (**"Original Price"**), the Seller reserves the right, by giving written notice to the Buyer, to increase the Original Price by an equivalent amount for all future Goods supplied to take effect no earlier than 3 months from when the Original Price was agreed.

5. Payment

- 5.1 The Seller shall invoice the Buyer for the Goods at any time after dispatch of the Goods.

- 5.2 Unless otherwise agreed in writing, the Buyer shall pay for each delivery of Goods in full, without deduction or set off to the bank account nominated by the Seller and in accordance with the terms stipulated on the Seller's invoice. If payment terms are not stipulated on the Seller's invoice, the Buyer shall pay no later than 30 days from the date of invoice. Save in the case of manifest error, the Seller's calculation of charges and rebates shall be final.
- 5.3 If any amount is not paid by the Buyer when due, the Seller may charge the Buyer interest up to the maximum amount permitted by law on the unpaid amount.
- 5.4 Time for payment is of the essence. A failure by the Buyer to make payment when due of any amount owing to the Seller under a Contract will entitle the Seller (at its option):
- i) to terminate the Contract;
 - ii) to suspend all deliveries to the Buyer pending payment in full of all sums outstanding under the contract including any amounts not then due, or require any satisfactory securities;
 - iii) to re-sell any of the Goods in its possession; and
 - iv) to be indemnified by the Buyer for any resulting Loss.
- 5.5 All amounts owing from the Buyer to the Seller shall be paid without any deduction or deferment on account of any dispute, cross claim or lien and without exercising any rights of set-off. No breach by the Seller of any other contract with the Buyer will affect this Contract.
- 6. Quantities**
- 6.1 The weight of the Goods sold is the weight as ascertained at the Seller's factory which weight shall be accepted by both parties as correct.
- 6.2 The Buyer shall not be entitled to reject a delivery of Goods on the basis that an incorrect weight or volume of Goods has been supplied, provided that any excess or deficiency is up to ten per cent of weight or volume ordered as agreed by the parties in the order confirmation. The Seller shall have no liability whatsoever to the Buyer for an incorrect weight or volume within this tolerance save that the Price shall be adjusted accordingly.
- 6.3 Where the parties agree Goods under a Contract are to be delivered by instalments, the Buyer agrees to call off the full quantity of the Contract within the agreed period and shall be liable to the Seller for the price of any Goods not taken within the agreed period unless such period has been extended by agreement of both parties in writing.
- 7. Delivery**
- 7.1 The Seller shall deliver the Goods at the place of delivery in accordance with the Incoterms stated in the Seller's confirmation of order. Failing such indication, the Goods shall be delivered ExWorks (Incoterms) at the Buyer's principal address.
- 7.2 Any date specified or agreed for the delivery or supply of the Goods is an estimate only and time shall not be of the essence although the Seller will endeavour to notify the Buyer if such dates will not be met. If no date is specified or agreed, the Seller shall deliver or supply the Goods within a reasonable time and at such time the Seller deems appropriate. Seller shall not be liable for any Loss caused by any delay in delivery or supply.
- 7.3 The Seller shall be entitled to deliver or supply the Goods at one time or by instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 7.4 If the Buyer:
- i) fails to accept delivery of the Goods when delivered or supplied; or
 - ii) having agreed to collect the Goods fails to do so when asked,
- the Seller shall be entitled to terminate the Contract and:
- i) the Buyer shall indemnify the Seller in respect of all resulting Loss suffered or incurred by the Seller; and
 - ii) the Seller may (but shall not be obliged to) store all or any of the Goods at the risk and expense of the Buyer.
- 7.5 The Buyer acknowledges that the Seller ships the Goods in phenolic lined steel drums, which is certified as food grade but that during transport the lining can occasionally be subject to damage. Accordingly, the Buyer agrees that it shall filter all Goods delivered by the Seller prior to use and further agrees that the Seller shall not be liable for any Loss arising as a result of dislodged drum liner within the Goods.
- 8. Risk and Title**
- 8.1 Risk in the Goods shall pass to the Buyer in accordance with the Incoterm stated by the Seller in the confirmation of order. If an Incoterm is not stated risk shall pass to the Buyer at the point of delivery as defined in 7.1 above.

- 8.2 Legal title to the Goods will not pass to the Buyer until the Buyer has paid all moneys owed to the Seller (whether or not then due and whether or not owing in respect of the Goods supplied). Until legal title passes the Buyer shall hold the Goods as bailee for the Seller.
- 8.3 The Buyer may sell any Goods it holds as bailee for the Seller in the ordinary course of business but only on the terms that it will itself retain legal title until the Buyer has received payment for the Goods. The Buyer shall hold the legal title retained by it and the proceeds of sale of the Goods on trust for the Seller.
- 8.4 So long as legal title to the Goods remains with the Seller, the Buyer shall without charge keep the Goods separate from all other goods in a way which will enable them to be readily identified as belonging to the Seller. If a Contract is terminated, the Seller or its representatives may enter the Buyer's premises and repossess them. The Buyer shall not destroy, deface or obscure any identifying mark or packaging on the Goods to which the Seller retains title without the express written permission of the Seller.

9. Warranty

- 9.1 The Seller warrants that the Goods (including any replacement thereof) shall comply on the date of shipment with the Seller's standard specification or with the specification agreed in writing with the Buyer, however the Seller retains the right to make any necessary alterations to specifications required for conformity with any applicable safety or statutory requirements.
- 9.2 All Goods shall be examined by the Buyer within 3 working days of delivery. If the Goods do not comply with clause 9.1 and
- i) the Buyer gives written notice to the Seller with full details of the non-compliance within 10 working days after the delivery of the Goods;
 - ii) unless otherwise requested by the Seller, the Buyer returns them to the Seller at the Buyer's expense (except that the Seller will reimburse any reasonable expense if, on examination, the Goods are found not to comply with clause 9.1);
 - iii) following sampling and analysis it is determined that the Buyer has not altered, interfered with or damaged the Goods or used them in any way not permitted by these terms or in an inappropriate manner or allowed anyone else to do so; and
 - iv) the Buyer has followed any delivery, storage, use or maintenance instructions of the Seller or of any manufacturer of the Goods,

then the Seller will, at its option, either remedy or replace the relevant Goods or refund the price paid for them. Any Goods which are returned to the Seller remain at the risk of the Buyer until the Seller has agreed that they are defective.

- 9.3 Claims concerning defects that could not practicably and or reasonably be discovered within the time limits above, despite thorough inspection of the Goods must be made in writing and received by the Seller within 3 working days from discovery of the defects and in any event not later than 30 days after the Buyer's receipt of the Goods.
- 9.4 The Seller makes no other expressed or implied warranties or representations concerning the Goods used alone or in combination with other materials (whether implied by statute or otherwise) and specifically excludes such warranties and representations to the fullest extent permitted by law. The Seller specifically makes no warranty of reasonable quality or fitness for any particular purpose, merchantability or that the Goods will comply with any laws, rules or regulations, unless expressly agreed by the Seller in writing. The Buyer agrees to conduct its own tests to determine the safety and suitability of Seller's Goods for the Buyer's purposes.

10. Limitation of liability

- 10.1 THE SELLER'S SOLE AND EXCLUSIVE LIABILITY TO THE BUYER AND THE BUYER'S EXCLUSIVE REMEDY IN RESPECT OF A DEFECT IN THE GOODS IS SET OUT IN CLAUSE 9 ABOVE.
- 10.2 **SUBJECT TO CLAUSE 10.4, IN NO EVENT SHALL THE SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO THE SELLER FOR THE GOODS SOLD HEREUNDER.**
- 10.3 **IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**
- 10.4 Notwithstanding any other provision of the Contract, the liability of the Seller shall not be limited in respect of: (i) death or personal injury caused by Seller's negligence; (ii) fraud or fraudulent misrepresentation by Seller; or (iii) any other Loss which cannot be excluded or limited by law.
- 10.5 The Price has been calculated on the basis that the Seller will exclude or limit its liability as set out in these Conditions and the Buyer shall insure against or bear any Loss for which the Seller have excluded or limited liability in these Conditions.

11. Force Majeure

- 11.1 If the Seller is prevented from carrying out its obligations under a Contract as a result of any cause beyond its reasonable control including acts of God, war, strikes, lock-outs, flood, failure of third parties to deliver the Goods and global shortages of raw materials, which render the Contract uneconomic ("**Force Majeure Event**"), the Seller shall be relieved of its obligations and liabilities under such Contract for as long as such fulfilment is prevented, subject to clause 11.2.
- 11.2 If Force Majeure continues for more than forty five days, either party shall be entitled to terminate the Contract by notice in writing and in that event neither party shall have any further liability under the Contract except in respect of any rights accrued before such termination.

12. Termination

- 12.1 Without prejudice to any of its other rights, the Seller shall be entitled to suspend further deliveries of the Goods and/or terminate a Contract and recover from the Buyer all resulting Loss and to repossess the Goods if the Buyer (i) is in material breach of the contract not capable of remedy or where the Buyer fails to remedy such breach within 7 days of written notice; or (ii) enters into insolvency, bankruptcy, administration, any arrangement with its creditors or any other arrangement or situation which has a like effect or the occurrence of any event analogous to this in any jurisdiction in which the Buyer is incorporated or resident or in which it carries on business or has assets.
- 12.2 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of either party which have accrued before termination or expiry, or any provision of the Contract which expressly or by implication is intended to come into or continue in effect on or after termination or expiry.

13. Intellectual Property Rights

- 13.1 All intellectual property rights in and to the Goods owned by the Seller or its licensors prior to performance of a Contract shall remain vested in the Seller or its licensors.
- 13.2 All intellectual property rights produced from or arising as a result of the performance of any Contract shall become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.
- 13.3 Subject to 13.4 below, if the Goods or the use thereof are held to constitute an infringement of any intellectual property rights and the use is thereby prevented, the Seller will at its own expense and option either procure for the Buyer the right to continue using the Goods or replace the same with a non-infringing product, or modify the Goods so that they become non-infringing, or may elect to retake possession of the Goods and refund the Price. The Seller shall be under no liability to the Buyer for any Loss, whether direct or indirect, resulting from any intellectual property right infringement of the Goods.
- 13.4 The Buyer shall indemnify the Seller against all Loss for infringement of third party intellectual property rights arising from the Seller's compliance with the Buyer's specific requirements regarding design or specification for the Goods or arising from the use of the Goods in combination with other products.

14. Product Recall

- 14.1 The Seller has the right to initiate a product recall, initiate any other corrective action and notify any appropriate regulatory authority, without requiring agreement from the Buyer. The Buyer shall provide the Seller with the assistance and information that it may require to implement such recall or corrective action. At the Seller's request, the Buyer shall immediately cease sale, delivery and distribution of any Goods specified by the Seller.
- 14.2 The Buyer shall immediately notify the Seller if it becomes aware of any complaint or claim which indicates that the Goods may be defective, faulty or unsafe in any way. On receipt of any complaint or claim, the Buyer shall send to the Seller details relating to the complaint(s) and the relevant Goods supplied.
- 14.3 The Buyer shall not implement or initiate any recall or corrective action without the Seller's prior express consent, unless the Buyer is directed to do so by a relevant regulatory authority.

15. Legal and Product Compliance

- 15.1 Each party warrants that it shall comply with all laws and regulations as are required of it from time to time to perform its obligations under or in connection with the Contract including the Foreign Corrupt Practices Act 1977.
- 15.2 The Buyer warrants that it shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to store, handle, deliver and sell the Goods.
- 15.3 No Goods supplied by the Seller are warranted as being safe for use in tobacco products or electronic cigarettes, vaporisers or other similar devices ("**e-cigarettes**"). The Buyer agrees that the Goods shall not be used in connection with the manufacture and distribution of tobacco products or e-cigarettes or any component thereof and undertakes to indemnify and keep indemnified the Seller against all loss or damage incurred by the Seller arising from use of the Goods in connection with tobacco products or e-cigarettes.

15.4 The Buyer shall not perform, directly or indirectly, any analysis of the Goods (or samples thereof) to determine chemical composition or structure, or any replication of the Goods (or samples thereof) for any purpose.

16. Data Protection

16.1 The parties agree to comply with any applicable privacy laws that may be relevant in respect of these Conditions.

17. Miscellaneous

17.1 **Confidentiality.** For the purposes of this clause 17.1 "**Confidential Information**" means any commercial, financial or technical information, information relating to the Goods including samples, plans, recipes, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract. The Buyer shall keep confidential all Confidential Information of the Seller and shall only use the same as required to perform the Contract. The provisions of this clause 17.1 shall not apply to: (i) any information which was in the public domain at the date of the Contract; (ii) any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement; (iii) any information which is independently developed by the Buyer without using information supplied by the Seller; or (iv) any disclosure required by law, any court, any governmental, regulatory or supervisory authority or otherwise by the provisions of the Contract. This clause 17.1 shall remain in force in perpetuity.

17.2 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered address or as otherwise specified by the relevant party by notice in writing to the other party. Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt; or (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting. This clause 17.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. A notice given under a Contract is not validly served if sent by email.

17.3 **Entire agreement.** The parties agree that these Conditions and each Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Each party acknowledges that it has not entered into a Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

17.4 **Waiver.** Failure by the Seller to enforce any provision of these conditions shall not be treated as a waiver of that or any other provision, nor shall it affect the right of that party subsequently to enforce any provision of these conditions.

17.5 **Severance.** Each provision of these terms is severable and distinct from the others. If any provision shall be held void or unenforceable in whole or part by any court or other competent authority, the remaining provisions, and the remainder of the provisions affected, shall remain in full force and effect.

17.6 **Assignment.** The Buyer shall not be entitled to assign any of its rights under any Contract without prior written consent of the Seller. The Seller shall be entitled to sub-contract any of its obligations and to assign any of its rights under any Contract but shall remain liable for its performance.

17.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce any of the provisions of the Contract.

18. Governing Law and Jurisdiction

All Contracts shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to principles of conflicts of law. Any suit, action, or other proceeding brought against the Seller or any dispute arising out of the these Conditions or the Contracts or any matter related thereto shall be brought in the state or federal courts located in the State of Florida and, by execution and delivery of these Conditions and/or the Contracts, the Buyer and the Seller accept and irrevocably submit to the jurisdiction of such courts and waives any objection based on personal jurisdiction or venue.