



## GENERAL CONDITIONS OF SALE

### 1. SCOPE OF GENERAL CONDITIONS

- 1.1 These general terms and conditions of sale (“**General Conditions**”) shall govern and shall be deemed an integral part of all the agreements entered into, including sales agreed verbally, by letter, on printed forms or in any other manner, between Borgo 1988 S.r.l., with registered office in Via dell’Artigianato 5, 36016 – Thiene (VI) , Italy (“**Seller**”), and the purchaser (“**Purchaser**”) of products manufactured by or on behalf of the Seller (“**Products**”), also bearing Seller’s trademarks (“**Trademarks**”).
- 1.2 Any terms and conditions applied by the Purchaser shall not have the effect of integrating, amending or replacing the provisions of these General Conditions. The Purchaser hereby waives the application of its own general and/or particular terms and conditions of purchase, which shall be deemed ineffective between the Parties, also pursuant to the provisions of Article 3.2 below.
- 1.3 The Purchaser hereby declares that he/she/it is a subject who intends to purchase the Products in the exercise of his/her/its entrepreneurial, commercial, handcraft or professional activity. The Purchaser is therefore aware that, since he/she/it does not qualify as a consumer pursuant to Article 3, paragraph 1, letter a), of Legislative Decree No. 206 of 6 September 2005, he/she/it cannot, in any case, claim the rights reserved to consumers under the aforementioned legislative decree.

### 2. DEFINITIONS

- 2.1 The following terms, when used in this General Conditions, shall have the following meanings:

“**Claim**”: has the meaning set forth in Article 7.1;

“**Defects**”: has the meaning set forth in Article 7.1;

“**Delivery Point**”: delivery point for the Products within or outside Italian Territory, as indicated in the Order Confirmation or agreed in writing between the Parties;

“**Force Majeure Event**”: has the meaning set forth in Article 17.1;

“**General Conditions**”: means these General Conditions;

“**Inspection Period**”: has the meaning set forth in Article 7.1;

“**Italian Territory**”: has the meaning set forth in Article 5.1.1;

“**Order**”: has the meaning set forth in Article 3.1;

“**Order Confirmation**”: has the meaning set forth in Article 3.2;

“**Party**”: means individually the Seller or the Purchaser;

“**Parties**”: means jointly the Seller and the Purchaser;

“**Price**”: has the meaning set forth in Article 8.1

“**Products**”: has the meaning set forth in Article 1.1;

“**Purchaser**”: means your company and/or any purchase qualified as a professional under Legislative Decree No. 206 of 6 September 2005;

“**Seller**”: means Borgo 1988 S.r.l.;

“**Trademarks**”: has the meaning set forth in Article 1.1.

- 2.2 Terms and definitions indicated in the singular include the plural and vice versa. Terms describing one gender include the other gender unless the context or interpretation indicates otherwise.

- 2.3 The titles and headings of the Articles of these General Conditions are provided for convenience only and have no influence on the interpretation of the respective provisions of the General Conditions.

### 3. ORDER AND ORDER CONFIRMATION

- 3.1 The Purchaser shall proceed with the purchase of the Products pursuant to these General Conditions by sending the Seller a purchase order (“**Order**”) – thereby accepting the General Conditions from that moment onwards – indicating: (i) the Products ordered; (ii) the quantity of Products; (iii) the price of Products.
- 3.2 Sales of Products in favour of the Purchaser shall not be considered completed, nor shall Orders be considered binding on the Seller, if they are not accepted by the latter in writing with an order confirmation sent to the Purchaser within 15 (fifteen) days from the receipt of the Order (“**Order Confirmation**”). By accepting the Order Confirmation sent by the Seller, the Purchaser agrees that any contractual terms or general and/or specific conditions provided by the Purchaser shall not apply to the contractual relationship with the Seller.
- 3.3 The Seller reserves the right to reject the Orders in whole or in part. Acceptance of part of the Order will not constitute acceptance of the entire Order.
- 3.4 In the absence of a written Order Confirmation sent by the Seller to the Purchaser within the period referred to in Article 3.2 above, the Order shall be deemed not accepted.
- 3.5 An Order Confirmation different from the Order as to elements other than object, quantity, price and delivery terms shall be considered to be accepted if the Purchaser does not communicate anything in writing to the Seller within 5 (five) days from the receipt of the Order Confirmation. In addition, the Purchaser expressly accepts possible variations in the quantity of Products (with particular reference to Orders for twine and similar goods), either in excess or in deficit, of up to 10% (ten percent) of the quantity indicated in the Order, due to possible production contingencies affecting of the Seller.
- 3.6 Preliminary documents and/or Purchaser’s details of supply not specifically accepted in writing by the Seller shall not produce any effects for the Parties.
- 3.7 The Purchaser is prohibited from transferring or assigning the Order without the prior written consent of the Seller. In the event of a breach of the obligation set forth in this Article 3.7, the Seller shall be entitled to terminate the contract entered into between the Parties, without prejudice to any claim for further damages and the exercise of remedies under these General Conditions and applicable law.



- 3.8 The Purchaser may modify and/or cancel the Order by written notice sent to the Seller no later than 3 (three) days after the sending of the Order, provided that the Seller has not yet sent the Order Confirmation to the Purchaser. Any amendment or cancellation of the Order sent to the Seller after the expiry of the period referred to in this Article 3.8 shall be ineffective.

#### 4 SUPENSION OF THE ORDER. TERMINATION

- 4.1 Should the financial condition of the Purchaser deteriorate to such an extent that the Purchaser's ability to fulfil payment of the Price is clearly impaired, the Seller shall be entitled to suspend or cancel the Order in its sole discretion, even if the Order has been confirmed, or to make the delivery of the Products subject to advance payment in full of the Price and of any other sum that may be due, or to execution of adequate guarantees.
- 4.2 Without prejudice to the provisions of Article 4.1 above, the Seller shall have the right to cancel the Order, even if the Order has already been confirmed, and to terminate the relevant contract entered into with the Purchaser, in the following cases: (i) in case of payment of the Price in a single instalment: non-payment, even partial, of the Price by the Purchaser; (ii) in case of payment in instalments of the Price: non-payment by the Purchaser of an instalment with a value exceeding 1/8 (one eighth) of the Price or of several instalments, regardless of their value; (iii) delay or non-acceptance of delivery of the Products in accordance with Articles 5.5 and 5.6.
- 4.3 The right to cancel the Order and to terminate the relevant contract referred to in Article 4.2 above shall be exercised by means of written notice sent by the Seller to the Purchaser, which shall be deemed effective immediately.
- 4.4 Should the Parties have agreed to pay the Price in instalments and the Order is cancelled, and the related agreement terminated by the Seller in accordance with this Article 4, the latter shall have the right to retain the instalments already paid by the Purchaser as indemnity.
- 4.5 Any delay by the Seller in exercising its rights under this Article 4 shall not be interpreted as a waiver of them in favour of the Purchaser.

#### 5 DELIVERY, TERMS AND RISK OF LOSS

- 5.1 Unless otherwise indicated in the Order Confirmation, the Seller shall deliver the Products:
- 5.1.1 within Italian territory ("**Italian Territory**"), at the Delivery Point agreed in writing between the Parties from time to time, it being understood that transport and shipping will be organized directly by the Seller and that the related costs will be included in the Price, as specified in more detail in Article 8.1 below;
- 5.1.2 outside the Italian Territory, Ex Works, EXW (Incoterms® 2020), at the Seller's factory located at Via dell'Artigianato 5, 36016 - Thiene (VI), Italy. In this case, all customs duties, transport costs, insurance, and other shipping costs from the Delivery Point, as well as any other special packaging costs requested by the Purchaser, shall be borne by the latter. The Purchaser shall also be required to complete all import formalities relating to the shipment of the Products, it being expressly understood that it shall be the sole responsibility of the Purchaser to request from the Seller all the documentation necessary for the above purposes, the latter being exempt from any liability in the event of the absence and/or non-conformity of such documentation.
- 5.2 The terms for delivery indicated in the Order, in the Order Confirmation or in other written communications between the Parties shall be merely indicative and not of a mandatory nature. Therefore, the Seller shall be entitled to deliver all or part of said Products in advance, or within a reasonable delay period, without this entitling the Purchaser to request full or partial termination of the agreement entered into by the Parties, claim compensation or indemnity, or invoke the Seller's liability for any other reason.
- 5.3 The Seller shall not, under any circumstances, be liable for delays in delivery of the Products due to Force Majeure Events and/or non-compliance or breaches by third parties, nor for any losses, costs, damages or expenses incurred by the Purchaser or by any third party, arising out, directly or indirectly, of any failure to meet any estimated delivery date.
- 5.4 The Seller shall notify the Purchaser in writing of the date on which the Products referred to in the Order will be delivered at the Delivery Point, as well as the period of time within which the Purchaser must proceed to accept the delivery.
- 5.5 In the event of delay by the Purchaser for any reason whatsoever in receiving all or part of the Products delivered at the Delivery Point, the Seller shall be entitled, at its own choice, to either request the Purchaser to receive the Products within 5 (five) working days or declare the total or partial termination of the contract entered into by the Parties, without prejudice to the Seller's right to charge the Purchaser for all costs, including those for the storage and warehousing of the Products, which shall be borne exclusively by the Purchaser. In any case, the Purchaser shall indemnify the Seller for any and all costs, charges and expenses arising from the delay in receiving the Products.
- 5.6 In the event that the Seller has assigned the Purchaser a deadline for receiving the Products pursuant to Article 5.5 above, if the Purchaser does not receive or refuses to receive delivery of all or even part of the Products at the Delivery Point within the aforementioned deadline, the Seller may, at its sole discretion, request the Purchaser to perform the contract concluded by the parties, or declare its total or partial termination. In both cases, the Seller shall retain the right to request compensation from the Purchaser for all losses and damages resulting from the Purchaser's conduct referred to in this Article - in addition to the costs and expenses arising from the storage of the Products - at a rate of 0.5% (zero point five percent) of the Price for each day of delay in receiving delivery of the Products, as a penalty pursuant to Article 1385 of the Civil Code, without prejudice to the Seller's right to compensation for any greater damage suffered.
- 5.7 The risk of the Products shall pass:
- 5.7.1 for deliveries outside Italian Territory pursuant to Article 5.1.2 above, to the Purchaser in accordance with the terms and conditions set out in the applicable Incoterms as mentioned above (i.e. Ex Works, EXW, Incoterms® 2020);
- 5.7.2 for deliveries within Italian Territory pursuant to Article 5.1.1 above, to the Purchaser upon delivery of the Products to the Delivery Point or, if a third-party carrier or shipper is responsible for transport and shipment, upon delivery of the Products to the aforementioned carrier or shipper.

#### 6 PACKAGING. LIMITATION OF LIABILITY



- 6.1 Absence of specific written indications by the Purchaser in the Order, the packaging of the Products shall be arranged by the Seller at its sole discretion by the means considered as the most appropriate. The Seller shall not be held liable for damages, direct or indirect, arising from the choice of packaging, except in case of willful misconduct or gross negligence.

## 7 DEFECTS AND WARRANTY

- 7.1 The Purchaser shall verify the existence of any defects of the Products within 10 (ten) days from delivery of the Products to the Delivery Point ("**Inspection Period**"). Any claim related to packaging, quantity, exterior features and defects which can be discovered on the basis of a careful inspection upon delivery of the Products ("**Defects**") shall be notified to the Seller by registered letter with return receipt and by certified e-mail, to the addresses indicated in writing by the Seller, within 10 (ten) days from delivery of the Products ("**Claim**").
- 7.2 The Purchaser hereby accepts that should the Claim not refer to the Order number, the Seller's invoice number, the batch number or serial number of the Products covered by the relevant Order and the exact indication of the claimed Defects, proved by adequate and appropriate photographic documentation, the Claim shall be ineffective and shall not grant the Purchaser the right to benefit from the warranty referred to in this Article 7.
- 7.3 The Seller shall assess, in its sole discretion, whether the Claim: (i) falls within the scope of this Article; (ii) is timely made; (iii) is well-founded. Solely in the event the Claim meets the three conditions above, the Seller may, at its sole discretion: (i) replace the defective Product; or (ii) refund the Price paid by the Purchaser for the defective Product.
- 7.4 The Purchaser hereby accepts and acknowledges that the Products are designed and intended only for the food industry; therefore, a warranty exclusion applies to the Products for use other than the one describe above, as set out in Article 7.4 (iii) below, of which the Purchaser declares that it is fully aware.
- 7.5 In any event, the Purchaser hereby agrees and acknowledges that the Seller shall not grant any warranty on the Products upon the occurrence of any of the following conditions: (i) the Defect is a direct or indirect consequence of improper use, storage or maintenance of the Product by the Purchaser, its customers or third parties or a Force Majeure Event; (ii) the Defect is a direct or indirect consequence of mishandling, transportation, shipping or other logistical processes carried out by the Purchaser, its customers or third parties (including carriers); (iii) the Product is used by the Purchaser or its customers improperly, outside its scope or in an application or environment other than that intended or recommended by the Seller; (iv) the Defect is caused by modifications not made by the Seller; (v) the Defect is the result of unusual physical or electrical stresses to which the Product is subjected; (vi) the Claim was notified after the Inspection Period (vii) the defect referred to in the Claim relates to aesthetic characteristics of the Products resulting from the Seller's website, catalogues, advertisements, price lists or other illustrative documents of the Seller, which shall be deemed to be information of indicative nature and shall not be subject to warranty under Article 1497 of the Civil Code.
- 7.6 The Seller shall not provide any warranty to the Purchaser's customers or other third parties for defects other than Defects. Except as expressly provided in this Article, the Purchaser expressly acknowledges that the Seller does not guarantee in any way any express, implied, legal or other warranty (including the warranty of merchantability or fitness for a particular purpose), as well as the conformity of the Products with any technical and/or sectoral regulations applicable to the country of destination outside the Italian Territory, it being the Purchaser's responsibility to request any compliance in this regard from the Seller - at the Purchaser's expense, unless otherwise agreed in writing between the Parties, while expressly exempting the Seller from any liability, including financial liability, for any non-conformities pursuant to this Article.
- 7.7 The pendency of disputes between the Parties or the filing of Claims shall not constitute just cause for the Purchaser to delay or suspend or reduce or offset payment of the Price, even in part. Except in the event of wilful misconduct or gross negligence, the Seller shall not be liable for loss of turnover or loss of image/commercial reputation suffered by the Purchaser and arising out of interruptions in the use of Products due to the Defects.

## 8 PRICE AND PAYMENT TERMS

- 8.1 The price of the Products is that indicated in the Order Confirmation ("**Price**"), it being understood that:
- 8.1.1 for deliveries within Italy pursuant to Article 5.1.1 above, the Price shall be understood to include transport and shipping costs, including any costs incurred by a third-party carrier or shipper, which shall therefore be borne exclusively by the Purchaser;
- 8.1.2 for deliveries outside Italian Territory pursuant to Article 5.1.2 above, the Price shall be understood to be Ex Works (EXW, Incoterms® 2020) at the Delivery Point, with all customs duties, transport costs, insurance, and other shipping costs from the Delivery Point, as well as any other special packaging costs requested by the Purchaser, remaining the sole responsibility of the Purchaser.
- 8.2 The Purchaser shall pay the Price to the Seller by wire transfer at the bank details indicated in the Order Confirmation. Unless otherwise agreed in writing by the Parties, the Seller shall submit the invoice to the Purchaser along with the Order Confirmation or the shipping document. The invoice shall state the amount to be paid by the Purchaser for all Products shipped. Terms of payment shall be indicated in the Order Confirmation. All payments shall be in Euro (€).
- 8.3 In case of payment of the Price by instalments agreed in writing between the Parties, Purchaser's failure to pay a single instalment whose value exceeds 1/8 (one eighth) of the Price or of more than one instalment, regardless of their value, on the due date, shall cause the forfeiture of the benefit of the term with reference to the subsequent due instalments and the right of the Seller to request the immediate payment of the residual Price.
- 8.4 Without prejudice to Article 4.2 above, in the event of total or partial failure in the payment of the Price or of one or more instalments of the Price, the Seller shall be entitled to apply, for each month of delay, interest on arrears at the maximum rate applicable by law, without prejudice, in any case, to the right to compensation for greater damages.
- 8.5 The Purchaser shall not have the right to raise exceptions in order to avoid or delay the payment of the Price, except for exceptions of nullity, annulment or rescission of the contract entered into between the Parties or of these General Conditions.

## 9 TITLE TO THE PRODUCT



- 9.1 The title to the Products shall not pass to the Purchaser and shall remain with the Seller unless and until the Seller has received payment in full of the Price for the Products as well as of any other amounts due according to these General Conditions, the agreement entered into between the Parties and the applicable laws.
- 9.2 Until title to the Products is not passed to the Purchaser pursuant to Article 9.1 above, the Purchaser shall: (i) hold the Products on a fiduciary basis; (ii) store the Products separately from all other goods held by the Purchaser, so that they remain readily identifiable as Seller's property; (iii) not remove, deface or obscure any identifying trademark and mark on or relating to the Products; (iv) not pledge or charge by way of security or indebtedness any of the Products; (v) maintain the Products in satisfactory condition; and (vi) notify the Seller immediately if the Purchaser becomes subject to any of bankruptcy or crisis resolution proceedings.
- 9.3 For sake of clarity, any breach of this Article may be enforced by the Seller against either the Purchaser or against any of the Purchaser's administrator, administrative receiver or liquidator (whether in their personal capacities or otherwise).

## **10 LIMITATIONS OF LIABILITIES**

- 10.1 In no event shall Seller's liability arising out of these General Conditions and of the agreements entered into by the Parties exceed the amount received by the Seller from the Purchaser for the Product(s) giving rise to the liability.
- 10.2 In no event shall the Seller be liable for costs of procurement of substitute products or services, lost profits or any consequential, incidental, or indirect damages, however caused and on any liability (including, but not limited to, negligence or strict liability), arising out of these General Conditions and of the agreements entered into by the Parties.
- 10.3 The Seller shall also under no circumstances be held liable for any damage caused to third parties by the use of the Products by the Purchaser or third parties, even in the event of improper use or use outside the scope or environment of use indicated by the Seller.
- 10.4 No actions, regardless of form, arising out of these General Conditions and/or of the agreements entered into between the Parties, may be brought by the Purchaser against the Seller after one (1) year following the cause of action has arisen.

## **11 THE PRODUCTS**

- 11.1 The Purchaser hereby acknowledges that the Products are intended only for the food industry.
- 11.2 The Seller will be entitled at any time to: (i) vary the design, finish or description of Products and/or their packaging; and/or (ii) substitute any materials or parts which are used in Products and which are unavailable for any reason with alternative materials or parts; to the extent that: (i) this does not materially affect their quality or performance; or (ii) this is necessary to comply with applicable law.

## **12 INDEMNITY OBLIGATIONS**

- 12.1 The Purchaser shall hold the Seller harmless and indemnified against any damage or claims by third parties arising from the use of the Products, by the Purchaser, its customers or third parties, even in cases of misuse or if it does not fall within the scope and/or environment of use indicated by the Seller.

## **13 VALUE OF CATALOGUES**

- 13.1 Specifications, qualities, materials, colours and other representational data appearing on the website, in catalogues, prospectuses, circulars, advertisements, illustrations, price lists or other Seller's illustrative documents, as well as the features of models sent by the Seller to the Purchaser, shall be interpreted as approximate indications and as not covered by warranty under Article 1497 of Italian Civil Code.

## **14 TRADEMARKS AND INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHT**

- 14.1 The Purchaser hereby expressly acknowledges that the Seller owns all the industrial and intellectual proprietary rights on the Products (including, but not limited to Trademarks, trade names, in any translation or transliteration, patents, copyrights, know-how, show-how, and trade secrets, irrespective of whether such rights arise under EU or international intellectual property, unfair competition or trade secret laws).
- 14.2 Any form of reproduction or use of the Trademarks and of Seller's industrial and intellectual property rights is strictly prohibited without the prior written authorization of the Seller.

## **15 PROMOTION OF THE SELLER'S NAME**

- 15.1 The Purchaser expressly waives to any remuneration related to the promotion, both direct and indirect, of Seller's Trademarks, name and Products.

## **16 CONDITIONS OF USE**

- 16.1 The Seller expressly recommends the Purchaser to inspect the Products' conditions of use, the instruction manual present inside any packaging, as well as any additional documentation delivered or submitted in writing by the Seller.

## **17 FORCE MAJEURE**

- 17.1 Neither Party shall be liable for non-performance of any or all of its obligations under the General Conditions and all contracts to which the General Conditions apply, if it can prove that such non-performance is due to circumstances that were unforeseeable at the time of the Order, for the Purchaser, or of the Order Confirmation, for the Seller, such as, but not limited to, fire, war partial or extensive military mobilisation, insurrection, requisition, seizure, embargo, currency and import/export restrictions, epidemics (including Covid-19 and its variants), natural disasters and acts of terrorism, as well as national, governmental, regional or local laws, regulations or acts establishing restrictions on movement, work and operations due to epidemiological circumstances (including Covid-19 and its variants, and others) ("**Force Majeure Event**").



- 17.2** In case of a Force Majeure Event, the delivery terms of the Products will be suspended for a period equal to the duration of the Force Majeure Event. Should the obligation to deliver the Products be suspended for a period longer than 30 (thirty) days of the Force Majeure Event occurring, the Seller shall be entitled to terminate the relevant contract entered into with the Purchaser without any further obligation.
- 17.3** In any event, non-payment or late payment of the Price by the Purchaser shall not be subject to the provisions of this Article 17 and the Purchaser shall not be released or discharged from its payment obligations in case of Force Majeure Event.

## **18 CONTACTS**

- 18.1** Except as otherwise provided for in these General Conditions, any communication and notice relating to the General Conditions and the agreements entered into between the Parties shall be sent by e-mail to the following email address: [info@borgo.it](mailto:info@borgo.it)

## **19 SECTIONS AND HEADINGS. TITLES. DEFINITIONS**

- 19.1** The sections and titles contained in these General Conditions are for reference purposes only and will not in any way affect the meaning and interpretation of this Agreement.
- 19.2** The definitions set forth in these General Conditions, presented with the first letter of the term capitalized, are applicable throughout these General Conditions.

## **20 SEVERABILITY**

- 20.1** Should one or more provisions of these General Conditions prove to be null or void for any reason whatsoever, the invalidity or voidness of such provisions shall not extend to the remaining provisions of the General Conditions, which shall remain in full force and effect.

## **21 WAIVERS**

- 21.1** Any Seller's delays in the exercise of its rights arising from the General Conditions and/or the agreements entered into with the Purchaser shall not be interpreted as waiver of the said rights in favour of the Purchaser.

## **22 INTERPRETATION**

- 22.1** In case of any differences between the English and the Italian versions of these General Conditions, the Italian version shall prevail.

## **23 APPLICABLE LAW AND DISPUTE RESOLUTION**

- 23.1** These General Conditions and contracts entered into by the Parties shall be governed wholly and exclusively by Italian law. The applicability of the Vienna Convention 1980 on the International Sale of Products is hereby expressly excluded.
- 23.2** For any dispute that may arise between the Purchaser and the Seller, both with reference to the present General Conditions and to each sale and purchase agreement entered into between the Parties, it is hereby agreed that the competent court shall be exclusively the Court of Vicenza, Italy. It is hereby understood that the Seller shall reserve the right to bring legal action against the Purchaser before the court at the place of business of the latter.

## **24 MISCELLANEOUS**

- 24.1** Nothing contained in these General Conditions shall be construed to require the commission of any act contrary to law. If a court of competent jurisdiction holds that there is a conflict between any provisions of these General Conditions and any present or future statute, law, ordinance, regulation or other pronouncement having the force of law, the latter will prevail, but the provision of these General Conditions affected thereby will be curtailed and limited only to the extent necessary to bring it within the requirements of the law, and the remaining provisions of these General Conditions will remain in full force and effect.
- 24.2** These General Conditions supersede and replace any previous agreement, written or verbal, between the Parties on the subject matter of the General Conditions.
- 24.3** No amendment or supplement to the General Conditions shall be valid unless agreed in writing by both Parties.
- 24.4** The Parties declare that they will process personal data exchanged within the scope of these General Conditions for purposes related to the management of the contractual relationship and the fulfillment of legal obligations. Each Party undertakes to process such data in compliance with EU Regulation 679/2016 and the Privacy Code, as amended by Legislative Decree 101/2018. The responsibilities of each Party for processing carried out within its own organization remain unaffected.

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