1. SCOPE
These General Terms and Conditions shall exclusively apply to all our offers, contracts, deliveries and other services (hereinafter “delivery”) provided to entrepreneurs and all other non-consumer entities, pursuant to Art. 31 of Legislative Decree no. 206 of September 6, 2005 (the so-called “Consumer Code”), also in all future business relations, even if they are not explicitly agreed upon again. These Terms and Conditions shall be deemed accepted upon order placement or receipt of the products at the latest. We hereby explicitly object to any deviating or supplementary conditions set by our customer, they shall not be binding for us; such conditions shall only apply if we have expressly agreed to them in writing. Also, in case we participate in a customer’s electronic platform and activate any dialogue boxes requested by the system, such activation does not constitute an acceptance of the terms of use or any other general terms and conditions of the customer. Should any provision of the present General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions thereof.

2. FORMATION OF CONTRACTS, DOCUMENTS, INDUSTRIAL PROPERTY RIGHTS
2.1 Our offers are not binding. A contract shall only come into force upon our order confirmation in writing or in text form. Drawings and other documents; these may be modified or made available to third parties only with our explicit approval. Drawings and other documents provided as part of an offer must be returned to us upon request at any time and in any event if the order is not placed with us. In case we deliver items according to drawings, models, samples or other documents provided by the customer, the customer shall ensure that industrial property rights of third parties are not infringed. If a third party, by invoking proprietary rights, prohibits in particular the manufacturing or use of such items, we shall be entitled to suspend all relevant activities and to claim damages without being obliged to analyse the legal situation (see also clause 8.3). In addition, the customer shall indemnify us from any third-party damages without being obliged to analyse the legal situation (see also clause 8.3). Furthermore, we reserve the right to withdraw from the contract if explicitly so stated by us. All costs deriving the products shall only be deemed a withdrawal in case of a material breach of contractual obligations by the customer, we may immediately retrieve the products without further notice, reasonably taking into account the legitimate interests of the customer; the customer hereby consents in advance to return the products in such instances. Receiving the products shall only be deemed a withdrawal from the contract if explicitly so stated by us. All costs deriving the products shall only be deemed a withdrawal if the customer is in default of acceptance or payment, the risk of accidental loss and damage of the products shall pass to the customer.

4. DELIVERY AND DELIVERY TIME
4.1 Lead times are provided for information purposes only and shall be non-binding, unless it is explicitly agreed that the delivery date shall be fixed. A delivery commitment is only binding if confirmed in writing or in text form. In case we deliver articles according to drawings, models, samples or other documents provided by the customer, we shall be entitled to suspend all relevant activities and to claim damages without being obliged to analyse the legal situation (see also clause 8.3). In addition, the customer shall indemnify us from any third-party damages without being obliged to analyse the legal situation (see also clause 8.3). Furthermore, we reserve the right to withdraw from the contract if explicitly so stated by us. All costs deriving the products shall only be deemed a withdrawal in case of a material breach of contractual obligations by the customer, we may immediately retrieve the products without further notice, reasonably taking into account the legitimate interests of the customer; the customer hereby consents in advance to return the products in such instances. Receiving the products shall only be deemed a withdrawal from the contract if explicitly so stated by us. All costs deriving the products shall only be deemed a withdrawal if the customer is in default of acceptance or payment, the risk of accidental loss and damage of the products shall pass to the customer.

4.8 Unless explicitly stated otherwise, any use of Incoterms shall be deemed as a reference to the INCOTERMS 2010 as published by the International Chamber of Commerce (ICC).

5. SECURITIES
5.1 Pursuant to and for the effects of article 1523 of the Italian Civil Code, we reserve title to all delivered products until all our existing claims, including conditional and accessory claims against the customer resulting from the business relationship for the purpose of securing the payment of invoices issued to the customer, shall be paid in full. Any other qualities of goods and services are subject to a further explicit agreement. Therefore, any warranty for a special application purpose or particular suitability, life period or durability shall be subject to an explicit written agreement; otherwise the risk of suitability and use shall be borne by the customer. We reserve any customary or technically unavoidable deviations from physical and chemical quantities, including colours, recipes, chemical composition and the use of raw materials as well as order sizes and reasonable quantity variances, as far as this is not unreasonable towards the customer.

3.3 Details of the delivery item (e.g. as provided in catalogues, product information, electronic media or on labels, such as “best before” information) are based on our general experience and knowledge and are for purposes of reference value or labelling only. These product details as well as expressly agreed features or application purposes shall not relieve the customer from the obligation to analyse the relevant information for the intended purpose and to take the respective measures for careful storage.

3.4 For the purpose of all statements within this section, the amount of the agreed invoice total (incl. VAT) hereby assigns to us in advance all claims resulting from the delivery transaction. In case of a current account, the reservation of title shall serve as security for our outstanding balance claim. All aforementioned provisions shall also apply to future claims. In case of a material breach of contractual obligations by the customer, we may immediately retrieve the products without further notice, reasonably taking into account the legitimate interests of the customer; the customer hereby consents in advance to return the products in such instances. Receiving the products shall only be deemed a withdrawal from the contract if explicitly so stated by us. All costs deriving the products shall only be deemed a withdrawal if the customer is in default of acceptance or payment, the risk of accidental loss and damage of the products shall pass to the customer.

5.3 The reservation of title shall also apply to new products resulting from the processing of the initially delivered items, or their mixing or combining with other items, in each case at the full value of the respective new product. These processes shall be performed by or on behalf of us. Upon such situations, we shall be entitled to suspend deliveries immediately and to refuse the fulfilment of current contracts unless the customer provides the respective consideration or, upon our request, provides appropriate securities.

4.5 In case the customer becomes subject to insolvency proceedings, or comparable proceedings under foreign law, experiences payment difficulties, files a proposal agreement for debt restructuring (“Accordo di ristrutturazione dei debiti”) pursuant to article 182bis of Royal Decree no. 267 of March 16, 1942 (Italian Bankruptcy Law) or in case we become aware of a significant deterioration of the creditworthiness of the customer, we shall be entitled to suspend deliveries immediately and to refuse the fulfilment of current contracts unless the customer provides the respective consideration or, upon our request, provides appropriate securities.

4.6 In case the customer is in default of acceptance or culpable breach of any accessory obligations, the customer shall indemnify us for any damages caused and any additional costs related thereto. Further claims and rights shall remain unaffected. In case of the customer’s default of payment, the customer shall inform us immediately of the events necessary for the suspension of deliveries or for the withdrawal of the products. In case of a current account, the reservation of title shall serve as security for our outstanding balance claim. Any other conditions of sale or terms of use or any other additional terms and conditions of use specified in contracts or delivery documents, or in any other agreements between us and the customer, shall not constitute an acceptance of the terms of use or any other additional terms and conditions of use.
already transfers to us his title and any expectant rights
in the new product in the amount of the invoice value
of the products delivered by us, and shall store it on its
behalf free of charge.
5.4 The customer shall be authorised to collect debt
claims from the resale assigned to us under clause 5.2
as long as we have not revoked this authorisation. We
will not collect such debt claims ourselves, as long as
the customer properly fulfils its payment obligations
towards us. Upon our first written demand the customer
shall inform us about the debtors of the assigned claims
and shall notify the debtors of the assignment.
5.5 We may revoke the customer’s authorisation under
clauses 5.2 and 5.4 to resell the products and to collect
the debt claims assigned to us if immediate effect if
the customer is in default of payment to us, experiences
payment difficulties due to a significant deterioration
of its financial situation or does not fulfil other material
contractual obligations properly. In case the customer
comes subject to insolvency proceedings, or compara-
tible proceedings under foreign law, discontinues pay-
ments, files a proposal agreement for debt restructuring
(“Accordo di ristrutturazione dei debiti”) pursuant to
article 182bis of Italian Bankruptcy Law or if a change
of ownership occurs in the customer’s business due to
payment difficulties, the authorisation to resell products
and to collect the debt claims assigned to us shall cease
automatically.
5.6 The customer shall store our (jointly) owned
materials on our behalf free of charge and with the due
care and professional diligence, pursuant to article 1176,
2nd paragraph, of the Italian Civil Code, and shall insure
them against fire, burglary and other usual risks. Any
required maintenance and inspection services have to
be timely performed at the customer’s expense.
5.7 The customer must not pledge or assign as security
any products delivered under reservation of title or any
products processed or manufactured on our behalf. The
customer shall notify us immediately of any pledge or
any other interference with our ownership rights
by third parties and shall confirm our title in the respective
product in writing, both to us and the third party. Any
expenses arising from resulting legal action shall be borne
by the customer.
5.8 In case the actual value of the securities exceeds
the nominal amount of the secured claims by more
than 10%, we will release selected securities upon the
customer’s request.
5.9 In case the reservation of title under clause 5.1
needs to be publicly registered or requires any other
documentary evidence for tax purposes, which we
consider necessary under the applicable statutory provi-
sions to prove our exemption from VAT for cross-border
deliveries. In case of non-compliance the customer
shall, after receipt of a corrected invoice, cover any VAT
claims and interest imposed on us by the tax authori-
ties. The customer shall inform us about the invalidity
or any changes in its VAT identification number without
undue delay.
6.1 In case of self-billing invoicing procedure or the
products - , the customer shall be solely
responsible for compliance with the VAT related provi-
sions on invoices. We shall not be liable for damages
resulting from the self-billing invoicing procedure, e.g.
any refunds of input tax and payment of interests and
penalties by the customer to the competent tax authori-
ties.
7. CLAIMS FOR DEFECTS
7.1 We shall be liable for defects of products delivered
by us only according to the following provisions.
7.2 The customer shall inspect the products upon
their delivery and shall notify us of any defects within
8 (eight) days pursuant to articles 1495 and 1511 of the
Italian Civil Code...
7.3 If defective products are delivered, we shall be
given the opportunity, prior to the start of manufactur-
ing (processing or installing), to sort out such products
and to remove the remedy or to make a substitute
delivery, unless this cannot reasonably be expected
from the customer. In case we are unable to accomplish
this or fail to comply in due course, the customer may
withdraw from the contract to this extent and may
return the products at our risk. In case of urgency, the
customer may, following consultation with us, remedy
the defects himself or instruct a third party to do so.
Expenses incurred by such remedial activities shall be
reimbursed to the customer according to clause 8.
7.4 If the defect is discovered only after the start of
manufacturing or initial operation, despite the fulfilment
of all duties according to clause 7.2, the customer may
require subsequent performance (rework or substitute
delivery at our discretion). The delivery of defective
products results in a right of retention only insofar as
it is in due proportion to the respective defect and the
expected costs of the subsequent performance, and
provided that the customer’s counterclaim is based on
the same contractual relationship.
7.5 Any claims for damages for defective products
shall be subject to two useless attempts of subsequent
performance. In case of substitute delivery the customer
is obliged to return the defective products upon request.
7.6 A withdrawal from the contract or a claim for
reduction of purchase price shall be granted only if the
defect cannot be remedied within an appropriate period,
if the request for performance will not be made promptly
at our request and at our cost. If complaints are unfounded, we may charge
the transport costs and inspection expenses to the
customer.
7.7 No claims for defects may be raised in case of
merely insubstantial deviations from the agreed quality,
insubstantial impairment of serviceability, or if the
defect can be put down to a violation of operation,
maintenance or installation instructions, unsuitable or
improper use or storage. This shall also apply in case of
factors or conditions of negligent handling, care and
tear or tampering with the delivery item by the
customer or a third party.
7.8 No costs may be claimed regarding the subse-
quent performance, the withdrawal from the contract
or damage-repair because of defective products, in
particular costs for shipment, transportation, labour and
material, insofar as these claims and costs result from
the fact that the products have been transferred to a
place different from the agreed place of performance
after passing of risk. However, this does not apply in
case such transfer corresponds with the normal use of
the products known to us.
7.9 Damages and reimbursement of expenses may
only be claimed according to clause 8.
7.10 The customer may not make the aforementioned
claims for any products, which, according to mutual
agreement, we do not deliver as new products.
8. LIABILITY
8.1 We shall be liable for any damages, in particular
resulting from a breach of duty of care when entering
into a contract (culpa in contrahendo), from a breach
of obligations or from unlawful acts (pursuant to article
2043 of the Italian Civil Code), only to the extent that
we, our employees or vicarious agents have acted
intentionally or grossly negligent.
8.2 For damages resulting from death or bodily harm,
we shall also be liable for ordinary negligence.
8.3 We shall be liable for the infringement of third
parties’ industrial property rights in connection with
the sale of our products under the foregoing provisions
only if the infringement results from the proper use
of the product, and only to the extent such third parties’
industrial property rights are valid in Italy and have been
published at the time of delivery. This shall not apply if
we have manufactured the product according to draw-
ings, models, or other descriptions or data provided by
the customer and if we did not know or did not have
to know of any infringement of industrial property rights
in connection with the developed product. In this case
our customer is liable for any current or future infringement
of third parties’ industrial property rights. The customer
undertakes to inform us without undue delay of any po-
tential and alleged cases of infringement of third parties’
industrial property rights. If may become aware of, and
to indemnify us from any third parties’ claims, costs and
expenses incurred.
8.4 Claims for defects of delivered products, including
any damages relating to such defects – irrespective of the
grounds – shall become time-barred 1 year after
delivery, pursuant to article 1495 of the Italian Civil
Code. If other claims under clauses 8.1 to 8.3 shall be
8.5 Claims for price reduction and rights to withdraw from the contract shall be excluded insofar as the primary claim for performance or the secondary claim for subsequent performance has become time-barred.

8.6 Our product liability pursuant to articles 114 and the following of the “Consumer Code” shall remain unaffected by the foregoing provisions.

8.7 We shall only be liable for claims of recourse by the customer if and to the extent the customer has not accepted obligations towards his own customer beyond the mandatory statutory provisions on remedies for defects and liability. Unless agreed otherwise in writing, clauses 7 and 8 shall apply accordingly to any claims of recourse raised by the customer.

8.8 We do not accept any further liability.

9. CONFIDENTIALITY

9.1 Customer shall keep any knowledge and information of a technical or economical nature it has received from us in connection with the business relationship (“Confidential Information”) strictly confidential towards third parties at any time, even after the end of the business relationship, unless the customer proves that the Confidential Information is (i) already known to the customer or in the public domain at the time of disclosure or subsequently becomes public knowledge other than through a fault of the customer, (ii) subsequently developed by the customer completely independently from the Confidential Information, or (iii) received by the customer from a third party without breach of a confidentiality obligation.

9.2 We remain the sole owner of any documents, in particular drawings, containing Confidential Information, which are disclosed in the course of the business relationship. Any such documents must be returned to us upon our request but at the latest at the end of the business relationship. The customer has no right of retention regarding Confidential Information or documents or materials containing Confidential Information.

9.3 The disclosure of Confidential Information does not establish any industrial property rights, rights to knowhow or copyrights of the customer and does not constitute a prior publication or right of prior use according to the applicable patent, design and utility model laws. Any kind of license is subject to a written agreement.

10. COMPLIANCE

10.1 The customer undertakes not to deal with or otherwise cooperate, neither directly nor indirectly, with any terrorist or terrorist organizations or any other criminal or anti-constitutional organizations. The customer will in particular establish reasonable organizational measures to implement applicable embargoes, the European regulations against terrorist and criminal acts and the respective requirements under US law or any other law applicable to the business relationship, in particular by implementing adequate software systems. Once a product has left our facilities, the customer shall be solely responsible for compliance with the abovementioned provisions and shall indemnify us from any and all claims or related costs resulting from the violation of the respective laws or regulations by the customer, its affiliates, employees, representatives or any of its vicarious agents, including reasonable attorney or consultant fees, administrative fees and penalties.

10.2 We will reasonably comply with the obligations resulting from the European Chemicals Regulation No. 1907/2006 (“REACH”) as subsequently amended that are directly applicable to us and will be liable for breaches according to clause 6. The customer shall, however, be solely liable for any negative consequences resulting from the provision of insufficient information by the customer, including any incorrect or incomplete information relating to the use of products within the supply chain.

10.3 The customer shall comply with foreign trade law provisions, in particular with any applicable export control regulations under Italian, EU and US law.

11. PLACE OF PERFORMANCE AND JURISDICTION, MISCELLANEOUS

11.1 For all claims resulting from our business relationship with the customer, in particular regarding our deliveries, the site from which the delivery originates shall be deemed the place of performance.

11.2 The customer may assign its claims arising from the contractual relationship only with our prior written approval.

11.3 For all claims resulting from our business relationship with the customer, in particular regarding our deliveries, the exclusive place of jurisdiction shall be Milan, Italy. This shall also apply to disputes concerning the formation and validity of a contractual relationship. We shall, however, also have the option to sue the customer in the courts competent for the customer’s registered office.

11.4 If a customer’s registered office is located outside of Italy, we shall be entitled to have all disputes arising out of or in connection with our business relationship with the customer, including disputes about the validity of contracts, finally settled by arbitration in accordance with the Rules of the Milan Chamber of Arbitration (the “Rules”) without recourse to the ordinary courts of law. The arbitration panel will consist of three arbitrators, one appointed by each of the parties and the third one appointed by the first two or, failing agreement, in accordance with the Rules. The arbitration shall be “rituale” and the arbitrators shall decide in accordance with the law. The place of arbitration shall be Milan, Italy. Upon request, we shall exercise our right to choose arbitration before proceedings are initiated. The arbitration proceedings shall be conducted in Italian, unless the customer requests them to be held in English.

11.5 The business relationship with the customer shall be exclusively governed by the laws of Italy, excluding its rules of private international law, the UN Convention on the International Sale of Goods (C.I.S.G.) and other bilateral or multilateral conventions on the harmonisation of law regarding the international sale of goods. This is a convenience translation of our Italian Conditions of Sale. In case of discrepancies between the Italian and the English version, the Italian version shall prevail.