

# TERMS AND CONDITIONS OF SALE AND DELIVERY

## BELMAFLEX POLSKA SP. Z O.O.

### 1. SCOPE

1.1 These Terms and Conditions of Sale and Delivery (the "**Terms**") of Belmaflex Polska Sp. Z o. o., a limited liability company registered and existing under the laws of Poland ("**Belmaflex**") shall apply to all quotations and offers made by and purchase orders accepted by Belmaflex for the sale of any product of Belmaflex (the "**Product**").

1.2 The Terms shall prevail and take precedence over any terms and conditions affixed to a Purchase Order or any other procurement document issued by the Buyer and such terms and conditions of purchase of the Buyer shall not apply between the parties. Consequently, Belmaflex' acceptance of Buyer's Purchase Order is conditioned upon Buyer's acceptance of the terms and conditions herein, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implication, or acceptance and payment of products ordered hereunder. Belmaflex's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of the provisions herein.

1.3 Any changes in the Terms contained herein must be specifically agreed to either in a general framework agreement (a "**Master Sales Agreement**") applicable between Belmaflex and the Buyer from time to time or in the Order Confirmation as the case may be in order to be binding on Belmaflex.

### 2. CONCLUSION OF THE AGREEMENT

2.1 A final agreement of sale (the "**Agreement**") shall only be deemed to be effective after Belmaflex has sent a written confirmation ("**Order Confirmation**") of a received order ("**Purchase Order**") to the Buyer or when the ordered Products have been delivered to the Buyer in accordance with section 5, and such Agreement shall be subject to the Terms.

### 3. PRICES AND TAXES

3.1 The purchase price payable for the Products ordered by Buyer (the "**Purchase Price**") is set out in a Master

Sales Agreement or in the Order Confirmation as the case may be.

3.2 The Purchase Prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty or other tax applicable to the sale of the Product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate.

3.3 In case of changes in cost of raw materials, taxes and duties, import/export duties, currency exchange rates, freight charges (where freight is payable by Belmaflex), or other conditions beyond Belmaflex's control Belmaflex is entitled to adjust the Purchase Price accordingly. Belmaflex shall notify the Buyer of such price adjustments without any undue delay.

3.4 Price adjustments according to section 3.3, shall apply to Purchase Orders received by Belmaflex after the Buyer have been notified of the adjustment of the Purchase Price, and shall thus not affect Purchase Orders that have already been confirmed by Belmaflex prior to such notification.

### 4. TECHNICAL INFORMATION, INSTRUCTIONS, ETC.

4.1 Any product information, illustrations, drawings and information on technical data such as volume, performance and the like in brochures, PowerPoint presentations, on Belmaflex's homepage etc. are for guidance only. Information given by Belmaflex shall only be binding subject to a separate written undertaking being issued as part of the Agreement.

4.2 Any drawings and technical documents submitted to the Buyer shall remain the property of Belmaflex and may not without Belmaflex's prior written consent be utilised for other purposes than the ones stipulated, or copied, reproduced, transmitted or otherwise communicated to a third party.

## 5. DELIVERY

5.1 Delivery takes place Ex Works (according to INCOTERMS 2010) at a Belmaflex production or distribution site or at any other location set out in any Master Sales Agreement or in Order Confirmation.

5.2 Belmaflex may deliver Products in one or more consignment and invoice each consignment separately, and reserves the right to ship Product in advance of the agreed shipping date.

5.3 In the absence of any specific instructions Belmaflex will select the carrier and ship the Products prepaid and added to the Purchase Price of the relevant Product. Belmaflex will not be deemed responsible for any liability in connection with any shipment because of the selection of a carrier or such carriers failure to maintain an insurance.

5.4 Unless otherwise agreed in writing, delivery time is not of the essence, to the effect that any time of delivery stated by Belmaflex is approximate and is not binding on Belmaflex. However Belmaflex will use its reasonable efforts to seek to accommodate any fixed delivery time wished by Buyer.

5.5 Except as stated to the otherwise herein Belmaflex does not accept liability for any loss arising from delay in delivery of Products.

5.6 Where delivery cannot be made due to conditions for which the Buyer is responsible, the product will be stored by Belmaflex at the Buyer's own expense and risk. Belmaflex is entitled to charge storage rent, have their costs paid, etc.

## 6. DELAY

6.1 If delivery is delayed, and Belmaflex is responsible for the delay, cf. section 5, the Buyer shall be entitled by written notice to Belmaflex to demand delivery. This is, however, conditional on the Buyer fixing a final deadline of minimum 14 working days, within which deadline the delivery shall be made, thus indicating the Buyer's intent to revoke the Agreement, if delivery has not taken place within such deadline. Only where the delivery is not made within this deadline, shall the Buyer be entitled to cancel the Agreement.

6.2 Apart from the right of cancellation mentioned in section 6.1, the Buyer shall have no other right to allege breach of the Agreement for delay and shall therefore have

no claim for damages of any kind, including trading loss, etc., in consequence of such delay.

## 7. RETURNING OF PRODUCTS

Products delivered to the Buyer in accordance with section 5, are non-returnable.

## 8. ORDER CANCELLATION

Belmaflex shall have the right to cancel any confirmed Purchase Orders without notice to Buyer in the event that Buyer becomes insolvent, adjudicated bankrupt, petitions for or consents to any relief under any bankruptcy reorganization statute, or becomes unable to meet its financial obligations in the normal course of business or if it is highly likely that one of the aforementioned circumstances will occur in near future.

## 9. PAYMENT TERMS

9.1 Payment terms shall be net thirty (30) days from the date of invoice. In the event of a delay in payment, a fee of 1% of the delayed payment is payable for each month started.

9.2 Belmaflex may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Belmaflex. Further Belmaflex reserves its right to require cash payment.

9.3 All payments are to be made in the currency set-out in any Master Sales Agreement or in the Order Confirmation, without set-off, deduction for processing or counterclaim, and shall unless otherwise agreed to by Belmaflex, be by electronic funds transfer pursuant to Belmaflex's instructions or by Belmaflex's draw upon a letter of credit. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Belmaflex is required to bring legal or other action to collect delinquent accounts, Buyer agrees to pay attorney's fees, costs of suit and cost of debt collection.

## 10. RETENTION OF TITLE

Any Products sold and delivered by Belmaflex shall remain the property of Belmaflex, and Belmaflex is granted a security interest in such products, until the full Purchase Price plus any interest and costs have been effectively paid.

## 11. NOTICE OF DEFECTS

11.1 Buyer shall notify Belmaflex of any visible defects, quantity shortages or incorrect Product shipments within five (5) days of receipt of the shipment. Failure to notify Belmaflex in writing of any visible defects in the products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return products on the basis of visible defects, shortages or incorrect shipments, subject to Buyer's rights under Section 6. Notices of any alleged defects shall be submitted to Belmaflex by e-mail (claims@belmaflex.com).

11.2 Belmaflex shall only be liable for original defects.

11.3 Any notice of defects of whatever kind shall be given within 12 months after the time of delivery and within 3 months after the time of delivery for shrinkable polyethylene products. If the Buyer fails to give such notice, the right to make any subsequent claim on account of the defect shall be forfeited.

11.4 If the Buyer makes a claim as a result of a defect, and it turns out that there is no such defect for which Belmaflex is liable, e.g. defects resulting from the Buyers insufficient storage or handling of the Products, the Buyer shall upon request from Belmaflex compensate any reasonable costs and expenses incurred by Belmaflex for work etc. carried out to investigate the claim.

## 12. LIMITED WARRANTY

12.1 Except as specified below Belmaflex warrants that Products sold hereunder shall be free from defects in materials and workmanship and shall conform to Belmaflex's published specifications or other specifications accepted in writing by Belmaflex for a period of 12 months from the date of shipment of the Products and for a period of 3 months from the date of shipment of the shrinkable polyethylene products. The foregoing warranty does not apply to any Products which have been subject to misuse, neglect, accident, modification alteration, inappropriate or insufficient storage according to **General Storage Conditions** or which have been installed/assembled or in any other way taken into use, without observing any instructions or user manuals issued by Belmaflex or any defects caused by insufficient or inappropriate raw materials or semi-finished products delivered by the Buyer to be further processed by Belmaflex. Belmaflex shall

make the final determination as to whether its Products are defective.

12.2 Belmaflex's sole obligation for products failing to comply with this warranty and the Buyer exclusive remedy shall be, at Belmaflex's option, to either repair, replace or issue credit for the nonconforming product.

12.3 THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BELMAFLEX DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS.

## 13. PRODUCT LIABILITY

Belmaflex shall be liable for defects in products pursuant to the mandatory provisions of the Polish Civil Code (Act dated on 23 April 1964, Journal of Laws of 2017, item 459). Belmaflex disclaims to the widest extent possible any other kind of liability for damage or injury caused by a defective Product cf. section 11.1.

Belmaflex's liability shall not exceed the coverage of Belmaflex's product liability insurance in force from time to time.

## 14. LIMITATION OF LIABILITY

14.1 Belmaflex shall not be liable for any indirect or consequential losses such as operational loss, loss of profit, loss of data or costs related to the recovery thereof, loss of goodwill, mutilation of information, loss of anticipated savings or the like.

14.2 If Belmaflex has any liability for breach of contract, breach of any implied condition, warranty or representation, the aggregate liability of Belmaflex to Buyer shall be limited in respect of any occurrence or series of occurrences to the contractual value of the products that are the subject of the affected orders.

## 15. INTELLECTUAL PROPERTY RIGHTS

15.1 Subject to the limitations herein, Belmaflex will defend any suit or proceeding brought against Buyer if it is based on a claim that any Product delivered hereunder constitutes an infringement of any third party intellectual property

rights. Belmaflex must be notified promptly in writing and given full and complete authority, information and assistance (at Belmaflex's expense) for defence of the suit. Belmaflex will pay damages and costs therein awarded against Buyer but shall not be responsible for any compromise made without its consent. In no event shall Belmaflex's liability for such damages and costs (including legal costs) exceed the contractual value of the products that are the subject of the lawsuit. In providing such defence, or in the event that such product is held to constitute infringement and the use of the product is enjoined, Belmaflex, in its discretion, shall (i) procure the right to continue using such product; (ii) replace the Products with non-infringing products; (iii) modify the Product so that it becomes non-infringing; or (iv) recall the Product and grant Buyer a credit for the depreciated value thereof. Belmaflex's indemnity does not extend to claims of infringement arising from Belmaflex's compliance with Buyer's design, specifications and/or instructions, or use of any product in combination with other products or in connection with a manufacturing or other process. The foregoing remedy is exclusive and constitutes Belmaflex's sole obligation for any claim of intellectual property infringement.

15.2 The sale of any Products hereunder does not convey any license by implication, estoppel or otherwise in the intellectual property rights owned by Belmaflex.

15.3 The Buyer will indemnify Belmaflex from and against all costs, losses and damages resulting from any Products manufactured by Belmaflex according to drawings, specifications and/or designs provided by or on behalf of the Buyer, including any claims regarding the Products' infringement of any patent, registered design, copyright or other intellectual property right belonging to any third party.

#### 16. **FORCE MAJEURE**

Belmaflex shall not be held liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts or omissions of the Buyer, act of civil or military authority, war, riots, concerted labour action, shortages of materials, or any other causes beyond the reasonable control of Belmaflex. The anticipated delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

#### 17. **SEVERABILITY**

If any provision(s) of these Terms is/are finally determined to be invalid or unenforceable, the balance of these conditions shall remain in effect. In this case the provision(s) must be replaced by such valid and enforceable provision(s) as will come as close to the purpose and legal position of the invalid or unenforceable provision(s) as possible.

#### 18. **WAIVER**

Failure by Belmaflex to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

#### 19. **NOTICES**

Any notice hereunder shall be deemed to have been given if sent by registered mail or by courier to the party concerned at its last known address. Notices to Belmaflex shall be sent to

Belmaflex Polska Sp. z o. o., Handlowa 12, PL-41-807 Zabrze or by e-mail to [belmaflex.polska@belmaflex.com](mailto:belmaflex.polska@belmaflex.com)

#### 20. **APPLICABLE LAW AND VENUE**

20.1 Any dispute arising out of the Agreement, including the present Terms and questions of product liability, shall be settled in accordance with Polish law. This provision on applicable law shall, however, not include the international private law rules of Polish law, including CISG.

20.2 Belmaflex's venue shall be the agreed venue. Belmaflex shall nevertheless always be entitled in lieu hereof to bring an action against the Buyer at the Buyers' venue. Furthermore, Belmaflex shall be entitled to demand that a dispute be settled by arbitration according to the rules of "Court of Arbitration" at The Cracow Chamber of Commerce and Industry in Kraków. Both parties shall be entitled to nominate an arbitrator, and the arbitration tribunal shall be domiciled in Kraków, and the proceeding be conducted in English.