

LEBEN INGREDIENTS S.r.l. a socio unico



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C.F. e P.IVA: IT 03625170125
Cap. Sociale: 75.000€ i.v.

GENERAL CONDITIONS OF SALE

1. LEGENDA

- 1.1 In the General Conditions of Sale, the following terms will have the meaning as hereinafter listed:
- “Leben”: Leben Ingredients Srl;
 - “Customer”: any company, body or legal entity that purchases Leben products from the latter;
 - The “Parties”: Leben Ingredients Srl together with the Customer;
 - “Product(s)”: the products marketed and sold by Leben;
 - “Purchase Order”: any request of purchasing products sent to Leben by fax, e-mail, post from the Customer;
 - “Sale”: any sale agreement made between Leben and the Customer following to the receipt by the Customer of a written order acknowledgement from Leben;
 - “Trademarks”: any and all trademarks Leben is the owner of, or licensee;
 - “Intellectual Property Rights”: any and all Leben intellectual and industrial property rights, including with no limitation, the rights related to trademarks, know-how, technical specifications and data whether such rights have been registered or not, as well as any application or registration relating to such rights and any other right or form of protection of a similar nature or having equivalent effect.

2. SCOPE

- 2.1 These General Conditions of Sale apply to any sale of Products.
Should the conditions and terms shown in the General Conditions of Sale conflict with the conditions and terms agreed in a single sale agreed between the Customer and Leben, the latter will prevail provided that conditions and terms have been agreed in writing and have been signed by both Parties.
- 2.2 Leben will not be bound by the Customer's purchasing general conditions (hereinafter referred to as “PGC”), not even if the PGC have been mentioned or included in the purchase orders or in any other document sent to Leben by the Customer unless they have been previously and expressly accepted in writing by Leben. Leben will apply its own General Conditions of Sale even when delivering products purchased by the Customer through the issue of a purchase order showing delivery terms and payment conditions different from the terms and conditions shown by Leben in the General Conditions of Sale, or previously agreed upon with the Customer in writing. The GCP will not be binding for Leben even as a result of tacit consent.
- 2.3 Leben reserves the right to add, modify or eliminate any provision of these General Conditions of Sale; it is understood that such additions, modifications, or cancellations will apply to any and all Sales agreed upon starting from the thirtieth day following the notification to the Customer of the new General Conditions of Sale.

3. PURCHASE ORDERS AND SALES

Given that the commercial offers issued by Leben are subject to modification and cannot be binding unless Leben itself expressly declares they are binding:

- 3.1 The Customer will issue and send to Leben purchase orders showing the description of the Product(s), the quantity demanded, the price and the delivery terms.
- 3.2 Leben shall acknowledge the purchase order in two weeks' time from the date of its receipt, or shall deliver the product(s) ordered as per the delivery terms included in the aforesaid purchase order.
- 3.3 The Sale shall be deemed to be ended up as follows:
- (i) At the very moment the Customer receives a written order acknowledgement from Leben by fax, by e-mail or by any other telematic means, in compliance with the purchase orders conditions;
 - (ii) Or, should the Customer receive a written order acknowledgement from Leben where different terms than the terms shown in the purchase order, two working days after the receipt of the order acknowledgement provided that no written complaint is sent to Leben from the Customer in these two days;
 - (iii) Or, missing any written confirmation from Leben, at the very moment when the Product(s) is/are delivered to the Customer.
- 3.4 The purchase orders regularly accepted by Leben cannot be cancelled by the Customer prior to Leben written approval.

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4. PRODUCTS PRICE

- 4.1 The price of the product is the price valid when the Customer issues the purchase order, that is the price communicated in writing and then confirmed at the order acknowledgement issue by Leben. Unless differently agreed upon in writing between the Parties, the price is net, V.A.T. and possible discounts excluded. The product price includes shipping and transport cost from the Producer and/or Saler site to the Customer premises.
- 4.2 Referring to continuous contracts involving delivery terms beyond three months from the contract signing, Leben reserves the right to change the price. Should the price of the raw material change at least three months after the order acknowledgement, Leben is authorized to apply the increase of the costs to the Customer, unless such an increase is balanced by the decrease of other structure costs. The price changing shall be communicated to the Customer and shall be effective from all the orders received by Leben starting from the following day from the notification to the Customer.
- 4.3 Leben will keep the ownership of the Products until the related amount due has been paid in full. The Customer shall fulfil its duties as per the law in force in order to maintain the present clause of the ownership valid and executable to third Parties also operating the enrolment in the appropriate register wherever required.

5 DELIVERY TERMS

- 5.1 Delivery terms are an integral part of any contract signed by Leben with its own Customers for the products offered.
- 5.2 Delivery terms are deemed to be accepted by the Customer if not immediately rejected in writing to Leben.
- 5.3 If not differently agreed upon in writing between the Parties, Leben shall deliver the Product(s) on DAP (delivery at place) basis. DAP is the term adopted by INCOTERMS 2020, published by the International Chamber of Commerce in their updated version, in force at the delivery time at the premises previously indicated by the Customer.
- 5.4 Leben shall not be deemed responsible of any delay, or lack in the product(s) delivering should the reason of the unfulfillment be due to facts out of its control, as for instance:
- a) Difficulties in obtaining the supply of raw materials;
 - b) Problems connected to the production or to the planning of the orders;
 - c) Total or partial strikes, electrical power failure, natural disasters, measures established and imposed by public authorities, transport problems, "force majeure", riots, terroristic attacks, and any other cause of force majeure;
 - d) Delays due to shipping companies.
- The occurrence of one or more of the aforementioned "force majeure" events will not entitle the Customer to ask to be refunded for any possible damage.

Leben shall of course be obliged to inform the Customer of the aforesaid events, informing, whenever possible, about the duration of the occurrence. Should the event have a duration longer than three months, the Customer can decide to cancel the order, or the contract. Leben will be obliged to refund just the amounts already received from the Customer for the order, or contract execution.

- 5.5 Should the delivery of the products or the performance of the service extend far beyond three months, or will become impossible to complete, Leben responsibility shall be limited to the economic refund of the damage caused, in accordance with what stated at the para. 9 of the General Conditions of Sale.

6 TERMS OF PAYMENT

The terms of payment are an integral part of all orders/contracts signed by Leben with its Customers for the products offered.

- 6.1 Unless otherwise agreed upon in writing between the Parties, Leben will issue its invoice at the delivery of the products.
- 6.2 Leben invoices shall be settled in due time and paid on the bank account indicated by Leben of the invoice issued. Bills of exchange will be accepted only if their expiry term is no longer than 90 (ninety) days and the fees linked to their collection are refunded by the Customer. The bills of exchange shall be issued by a primary bank. It is anyway Leben's right to refuse the payment by bill of exchange.



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- 6.3 Should the terms of payment for the supply of products expire, the Customer will be considered in arrears with the payments. As a consequence thereof, the legal provisions related to deferred payments will apply. Leben will reserve the right to ask the interests payment to the Customer, in accordance with the Law Decree nr. 231/02.
- 6.4 A nonpayment, or a delayed payment exceeding 30 (thirty) days shall entitle Leben to suspend the Product(s) delivery and cancel any single sale/contract signed. The suspension in Products delivery or the Contract termination will not give the Customer the right to claim any compensation for damages.
- 6.5 Leben shall be entitled to suspend and keep pending deliveries and services should it become aware of facts absolutely damaging its reputation due to credit solving problems the Customer have which may compromise the correct execution of the Order, or of the contract signed between the Parties.
- 6.6 Any claim related to the Product(s) and/or to their delivery shall never justify the delay or the suspension of the payment.

7. TRANSPORT

- 7.1 Unless otherwise agreed upon in writing between the Parties, transportation will always take place at the Customer's expense and risk. Should the transport of the Product be commissioned to Leben, then Leben will choose the most appropriate transport mean missing specific instructions received from the Customer.

8. NON COMPLIANCE AND CLAIM

- 8.1 The Product(s) quality shall be defined in the specifications delivered to Leben by the Customer. Any deviation to the specifications supplied shall be the valuation base of any defect the Customer should find. In the event the Customer has not supplied any specification, the Product defect shall be determined in accordance with the Civil Code. No claim can be issued for minor deviations to what agreed in writing by the Parties and if the deviations do not affect the Product(s) use.
- 8.2 Should the Product(s) delivered to the Customer show a discrepancy of type and/or of quantity compared to what ordered, the Customer shall communicate in writing such a discrepancy to Leben within 5 (five) days from the delivery time. If the written communication is not issued within the terms of five days, then the Product(s) shall be considered compliant to the Customer order.
- 8.3 Prerequisite for a complaint filing related to a defective product is its inspection after the delivery. The Customer shall inform Leben in writing of defects found within 5 (five) days from the Product(s) delivery if defects are obvious flaw; or within 5 (five) days from the defect finding if such defects are hidden, or cannot be detected by an employee averagely diligent.
- 8.4 The Customer can ask the "repairing" or the replacing of a defective product with another defect-free product. Should the Customer omit the option choice, Leben will communicate the deadline to the Customer for the option chosen. Should not the Customer inform on the option chosen in due time, then Leben will decide the option to be adopted.
- 8.5 The Customer shall give the necessary time to Leben to inspection the product the claim has been filed for. Should Leben confirm the product is defective, all the costs resulting from the inspection and the ancillary activities needed to replace the product, like for instance transport fees, labour and cost of the product shall be supported by Leben.
- 8.6 Should the product be replaced, upon Leben's request the Customer shall return the defective product according to the law in force on the subject.
- 8.7 Leben's acceptance of the claim shall be conditional to the payment of the product related to the claim filed by the Customer. However, the Customer shall have the right to deduct from the related payment the amount directly traceable to the defect.
- 8.8 In case of urgency and of a serious defect that may cause a risk to safe operations, or just to prevent an incommensurate damage, the Customer can ask to remove the defect and be refunded for the costs it necessarily incurred to solve the problem. Should the Customer take the decision to personally remedy to the damage, it shall immediately communicate its decision to Leben, possibly in advance respect to the action. Leben shall anyway have the right to refuse the Customer's action in accordance with the law in force.

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8.9 Should Leben provide to a second delivery of the product and even this second supply is defective, or should the Customer receive the product beyond the deadline agreed upon to replace the defective product, then the Customer may obtain a reduction to the purchase price or, in accordance with the law in force, ask the contract termination.

8.10 It shall be understood that the Customer has no right to ask the contract termination for minor defects.

8.11 Claims filed by the Customer involving the refunding or the compensation of costs unnecessarily borne the Customer for alleged damages shall be accepted only in relation to what stated in the following paragraph 9 – Responsibility.

9. RESPONSIBILITY

9.1 Without prejudice to what indicated in the previous paragraphs, and except in the case of fraud or of serious negligence, Leben will not be liable for indirect or consequential damages of whichever nature and type as, for example, losses resulting from the inactivity or from the lack of earnings of the Customer.

9.1 Leben will be held responsible in accordance with the provisions of the law for any complaint presented by the Customer with a request for compensation for serious damages, involving premeditation or negligence, including serious damages possibly caused by the manufacturer, EMSLAND GROUP.

9.2 In the event Leben cannot be blamed for breach of contract through premeditation, the compensation for damages will be limited to that of a typical and foreseeable damage.

9.3 Leben will be held liable in accordance with the legal provisions for culpable violation of the essential duties established in the stipulated contract, if the violation endangers the purpose of the contract.

9.4 Leben will be liable for damages that caused permanent damages to health or death.

9.5 Should the Customer request to be refunded for unnecessary expenses rather than just compensation of the damage, the limitations referred to in the previous para. 7.10 and 7.11 shall apply.

10 PLACE OF FULFILMENT AND TRANSFER OF THE RISK

10.1 The place of fulfilment of the contract by Leben will be the Customer's factory, at the address communicated to Leben and indicated in the order. The transfer of risk from Leben to the Customer will occur when the product is unloaded from the transport means.

11 WARRANTY

11.1 The warranty will last one year from the moment of the risk transfer. The legal responsibilities in relation to the para. 9 of these General Conditions of Sale, as well as the obligations relating to payment and delivery terms will remain unchanged.

11.2 The warranty will not cover any defects found in the Product(s) due to:

- (i) Negligent or improper use of the Product;
- (ii) Failure to comply with Leben's instructions regarding the storage of the Products;
- (iii) Changes made by the Customer or by third parties without the prior written authorization of Leben.

11.3 Provided that the Customer's complaint is covered by warranty and notified within the deadline stated in the paragraph 8.2 above, Leben undertakes, at its discretion, to replace or repair the defective Product.

11.4 In any case, the Customer will not be in the position to assert the warranty rights towards Leben if the price of the Product has not been paid under the agreed conditions and terms, even if the failure to pay the price under the agreed conditions and terms refers to a Product other than the one for which the Customer intends to assert the guarantee.



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12 RIGHT OF OWNERSHIP

- 12.1 Leben reserves ownership of the Products until it receives all payments related to the contract in place with the Customer.
- 12.2 In the event of breach of the contract due to the Customer's fault and, specifically, due to late payment, Leben will have the right to terminate the contract in accordance with the provisions of the law and to request the release of the Products based on the right of ownership and termination. If the Customer cannot pay the purchase price, Leben may confirm its right of ownership or request the termination of the contract in the event the Customer has not respected the deadline agreed with Leben for the payment of the amount due.
- 12.3 The Customer will have the right to resell the product through a regular business transaction; however, it will transfer to Leben the amount collected from its customers or third Parties up to the amount of the total invoice - VAT included – corresponding to the debt amount owed to Leben, regardless of whether the Product was resold without or after processing. Leben shall accept the transfer.
- 12.4 After the termination of the contract, Leben will be authorized to request the amount of the Products delivered and not paid for by the Customer. If the earnings are greater than the amount owed by the Customer to Leben, the Customer will keep the difference.
- 12.5 The Customer will be authorized to cash the amount paid by its own Customers or Third Parties even after the transfer of the credit to Leben. Leben's authorization to collect the amount due will remain unchanged. However, Leben undertakes not to collect the amounts owed to it by the Customer directly from Customers or Third Parties as long as the Customer is in compliance with the payment terms deriving from the proceeds of its sales; it is therefore not in arrears with payments and in particular no insolvency proceedings have been initiated against Customer. If this is the case, Leben may ask the Customer to transfer the credits claimed by the Customer from its debtors and all information necessary to cash the amount, as well as all the related documents. Leben will then take care of notifying the debtors (Third Parties) of the transfer of the credit in its favour by the Customer.
- 12.6 Any processing or transformation of the product by the Customer shall be performed on Leben's account. If the product has been processed with other products which have not been supplied by Leben, Leben will acquire the co-ownership of the new product based on the ratio value of the products (total amount of the invoices, VAT included) respect to the product processed at the processing time. The same procedure adopted for the product originated by the processing shall apply, as well as for the products delivered with ownership right.
- 12.7 If the products have been mixed inseparably with other products not supplied by Leben, Leben will acquire the co-ownership of the new product based on the value of the products (total invoice amount, including VAT) compared to the mixed product at the time of mixing. If the mixing is carried out in such a way that the product obtained becomes a primary product, then the Customer shall reserve a quota of it to Leben. The Customer shall safeguard the basis of the products or the co-ownership arising from such mixing on behalf of Leben free of charge.
- 12.8 Leben undertakes to release the guarantees to which it is entitled upon the Customer's request should the value of all guarantees exceeds by more than 10% the amount due; the choice of the guarantees to be issued will be up to Leben.

13 TERMINATION OF THE CONTRACT

- 13.1 When the Customer issues a purchase order, it enters into an agreement that binds the Customer to purchase the product(s) relating to the order issued.
- 13.2 The contract agreement shall be considered terminated should Leben fail the product(s) supply because Leben itself has not received the product(s). Should this event occur, then Leben will not be obliged to respect the Contract agreement. Leben could maybe proceed to a partial supply of product(s) referred to the contract agreement. The contract termination could be applied only if Leben is not responsible for the missed delivery of the product(s). Should it be the case, Leben will immediately notify the Customer of the unavailability of the product, or of its partial availability and will promptly return the amount of the advance payment received to the Customer.

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14 CONTRACT CANCELLATION

- 14.1 Leben shall reserve the right to terminate or cancel any contract involving continuing obligations should it become aware of objective events unforeseeable at the contract was stipulated. An unforeseen event that could lead to the contract cancellation could be false information concerning the Customer credit line, or the Customer's ownership change that could seriously harm Leben interests or, again, insolvency proceedings initiated against the Customer, or the occurrence of other events that may jeopardize the requests for payment of the amounts due to Leben because of lack of funds.
- 14.2 Leben shall be entitled to cancel at any time a single sale by a written communication sent to the Customer if the Customer does not fulfil the obligations as of Para. 4 (Product Price), 6 (Terms of Payment) and 12 (Ownership Rights), in accordance with the Art. 1456 of the Italian Civil Code;
- 14.3 Leben will have the right to suspend the fulfilment of the obligations deriving from the Sale of the Products based on the art. 1461 of the Italian Civil Code in the event the Customer's financial conditions become such as to seriously jeopardize the achievement of the performance, unless suitable guarantees are provided.

15 LEGAL ADDRESS, APPLICABLE LAW AND JURISDICTION

- 15.1 Any dispute arising in relation to a contract or its validity, the Parties agree that the registered office of Leben is considered the sole jurisdictional seat.
- 15.2 The General Conditions of Sale and each individual Sale will be governed and interpreted in accordance with the laws of the Italian Republic, excluding the Vienna Sales Convention of 1980 on contracts for the international sale of movables.
- 15.3 Any dispute arising from/or connected to these General Conditions of Sale and/or to each individual Sale will be subject to the exclusive jurisdiction of the Court of Varese.
- 15.4 Unless differently agreed in the previous paragraph 14.3, Leben reserves the right, when promoting a legal action as a plaintiff, to take such action in the place of residence of the Customer.