

These General Terms and Conditions of Sales ("GTC") apply to any sale and delivery of products and services (together the "Products") by ORCHARD International Inc. (hereinafter "ORCHARD") to its customers ("Client") after individually "the Customer" and are an integral part of each transaction between ORCHARD and its Customer ("the Contract").

These GTC constitute the sole agreement between ORCHARD and its Customer (here in after collectively referred to as the "Parties"). The Customer represents that it has full knowledge and understanding of these GTC and acknowledges having accepted them without restriction or reservation, after having been able to negotiate them with ORCHARD. The Customer acknowledges that it was provided with all necessary advice and information to ensure the adequacy of the Products and these GTC to its needs and confirms that it has issued a purchase order with full knowledge and understanding of these GTC.

Notwithstanding any other provisions in any Order or agreements between the Customer and ORCHARD, any Order placed by the Customer or any acceptance by the Customer of an offer of sale from ORCHARD constitutes the Customer's express acceptance of these GTC and waiver of any right the Customer may have to enforce its own general conditions or any other terms or conditions that are inconsistent with these GTC.

Failure by ORCHARD to enforce at any time any provision of these GTC shall not be construed as a waiver of ORCHARD's right to act or to enforce any such term or condition and ORCHARD's rights shall not be affected by any delay, failure or omission to enforce any such provisions.

1. Finalization of the contract

Orders are binding upon ORCHARD only once they are accepted by ORCHARD in writing (the "Order"). All sales of Products are final and, unless otherwise set forth here in, the Products may not be exchanged or returned for a refund. Under no circumstances does the commencement of performance by ORCHARD of the Order constitute ORCHARD's final acceptance of the terms of such Order. Unless otherwise provided hereinafter, the Customer cannot cancel an accepted Order.

Any information, specifications and pricing in ORCHARD's catalogues and/or documentation, including any quotation, are provided for information purposes only. ORCHARD shall only be bound by information, specifications and pricing set out in the Customer's Order as accepted in writing by ORCHARD.

Unless otherwise provided in ORCHARD's written acceptance of the Order, the studies, testing, marketing materials and recommendations provided to the Customer shall not be incorporated by reference into the Order. It is the sole responsibility of the Customer to verify for itself by carrying out appropriate tests if necessary, in order to ensure, prior to design and manufacture of the Product or performance of the service, that the Product is compatible with its intended use.

Unless otherwise agreed between the Parties, the Customer shall be solely responsible for obtaining, in a timely manner, its permits, authorizations or other legal requirements required for, inter alia, import control, exchange control of the Products into the country of delivery or payment of the Products sold, and the Customer shall inform ORCHARD in writing upon receipt or performance of such permits, authorizations or other legal requirements no later than upon issuing the Order.

2. Tooling – Components

2.1. Tooling. Unless otherwise provided in ORCHARD's written acceptance of the Order, the tools (including, but not limited to, equipment, machines, molds and prototypes, (collectively "Tooling") shall remain the property of ORCHARD as an integral part of its means of production and its intellectual property, even in the event of the Customer's financial contribution and/or the Customer's participation to the definition of Product specifications. Any contribution by the Customer to cover all or part of the cost of manufacturing such Tooling shall in no event (i) result in the transfer of ownership of such Tooling to the Customer, (ii) authorize the Customer to request transfer of such Tooling to another supplier without ORCHARD's prior written consent, or (iii) restrict the production by ORCHARD of products using such Tooling for other customers. The Tooling shall be marked only with the name of ORCHARD.

Notwithstanding the foregoing, it may be agreed in writing by the Parties that, when Tooling is supplied by a Customer or is exclusively manufactured for a Customer and the cost of the Tooling is fully borne by the Customer, such Tooling shall belong to such Customer ("Customer Tooling"). In such circumstances, all costs and expenses (including, but not limited to, development, repairs, modifications in restorations, duties and taxes) shall be borne by the Customer and shall be re-invoiced to the Customer if necessary. Such Customer Tooling shall be kept in ORCHARD's premises and ORCHARD will maintain such Customer Tooling in normal working condition with respect to its service life and specific characteristics as provided for and agreed in writing by the Parties at the time of its delivery by or for the Customer.

Such Customer Tooling must be properly insured by the Customer against theft, damage or destruction. The Customer waives all right and recourse against ORCHARD and its insurers on such basis and shall require its insurers to waive rights of recourse against ORCHARD, except if the Parties agree in writing that, for any specific Order, such Customer Tooling is to be insured by ORCHARD.

Customer Tooling shall be returned at the expiration of the Order related to the applicable Products, upon the Customer's written request, with all associated costs paid by the Customer and the delivery of such Customer Tooling shall only be made after payment by the Customer of all amounts due to ORCHARD.

Should the Customer fail to request return of Customer Tooling or should such Customer Tooling not be used during a continued three (3) year period since the last use of such Customer Tooling, the Customer shall be liable to destroy such Customer Tooling at Customer's costs and expenses, subject to prior notification to the Customer. Upon receipt of such notification, the Customer shall have a five (5) calendar day period to request return of Customer Tooling at its costs and risks.

2.2. Components and raw materials. Components, substances, formulae, ingredients, fragrance and raw materials (collectively the "Components") required for the manufacture of Products shall be procured as follows, as shall be set forth in ORCHARD's written confirmation of the Order (i) placed at ORCHARD's disposition by the Customer, in which case they shall be under ORCHARD's custody until Product delivery and ORCHARD shall be in charge of the corresponding waste disposal, or (ii) procured by ORCHARD from independent third party suppliers selected by ORCHARD or as instructed by Customer, in which occurrence they shall be included in the definition of Products for the purposes hereof.

3. Delivery

Delivery dates and deadlines indicated by ORCHARD in its written acceptance of the applicable Order shall be indicative. Delays with respect to any such delivery dates and deadlines shall not be binding on the Customer with or without remuneration, on a permanent or temporary basis, the Products (including supplies and replacement parts delivered under the warranty), documentation, specifications and information of any kind associated with the Products, without the prior written consent of ORCHARD and/or the competent authorities concerned.

Delivery dates and deadlines shall be automatically extended in the event of a delay that is due to force majeure under the provisions of Article 7, as well as in the event of delay that is attributable to the Customer, including, but not limited to late payment by the Customer as provided in Article 4.2.

With regard to Products not produced by ORCHARD itself, the obligation to deliver shall furthermore be subject to ORCHARD' receipt of Products from its suppliers or subcontractors.

Unless otherwise provided in the written acceptance of the Order, ORCHARD reserves the right to require the Customer to accept delivery of all Products under one Order in a single delivery.

Unless otherwise provided in ORCHARD's written acceptance of the Order, the Products shall be delivered in accordance with the regulations applicable in the country of manufacture of the Products on the date of ORCHARD's written acceptance of the Order in packaging that is customary in the industry sector of ORCHARD. ORCHARD shall not be liable for any damage to the Products or loss of the Products or loss of the Customer or if special conditions of carriage/transportation have not been previously requested by the Customer to ORCHARD and agreed to by ORCHARD in writing.

The Customer shall not alter or modify, in whole or in part, the packaging, its markings and figures included thereon, or the formulae, Components or contents of the Products after the time of delivery and shall use any such Products as they may have undergone such alteration or modification.

Unless otherwise agreed upon by the Parties in writing and not withstanding the retention of title pursuant to Article 5, the costs and risks relating to the Products (including the risk of loss or destruction) shall be transferred to the Customer in accordance with the Incoterm indicated in the Order, or, in the absence of an Incoterm in the Order, "Ex Works" (ICC Incoterm 2020).

In the event of application of the Ex Works-Incoterm and if the Customer fails to take delivery of the Products on the agreed delivery date, ORCHARD shall invoice the Products to the Customer on the agreed invoice date and may further re-invoice all the related storage costs of the Products until the actual date of delivery of the Products to the Customer. The Customer shall, without protest pay such invoices in accordance with the timeline mentioned in them.

The Customer shall notify ORCHARD without delay by registered letter with acknowledgment of receipt, of any material or legal action (including but not limited to any seizure made by a third party) that may affect the retention of title as described in article 5.

If the Products are subject to export restrictions (legal, regulatory or contractual), the Customer hereby undertakes not to sell, lend or deliver to any party whatsoever, under any circumstances whatsoever, with or without remuneration, on a permanent or temporary basis, the Products (including supplies and replacement parts delivered under the warranty), documentation, specifications and information of any kind associated with the Products, without the prior written consent of ORCHARD and/or the competent authorities concerned.

4. Prices – Terms of payment

4.1. Prices – Price revision. Product prices are established pursuant to the written quotations of ORCHARD, which are valid for sixty (60) calendar days following their issuance. The Orders shall be based on the quotations applicable on the date of the Order.

If one or more of the factors that were taken into consideration to establish the price set in ORCHARD's written acceptance of the Order undergoes (a) change before the date of delivery of the Product and even if such change was foreseeable at the time of the quotation or ORCHARD's written acceptance of the Order, as applicable, IBC shall notify so to the Customer and explain the impact of such change on the price of the Order.

Should the Customer fail to request return of Customer Tooling or should such Customer Tooling not be used during a continued three (3) year period since the last use of the Customer Tooling for the Customer or if the Customer Tooling has been subject to a minimum of one million (1 000 000) shots since its first use for the Customer Order, as applicable, IBC shall notify so to the Customer and explain the impact of such change on the price of the Order. Should the Customer, upon expiry of an eight (8) calendar days' notice addressed to the Customer fail to expressly accept the change, ORCHARD shall be at liberty to rescind the Order without compensation of any kind. The factors that may be taken into account, but are not limited to, the cost of raw materials and components, energy, packaging, taxes, customs duties and transport costs. For the avoidance of doubt, it is expressly stipulated that such price increase shall not be taken into account to calculate the revenues threshold giving rise to rebates that may have been negotiated and agreed upon between the Parties with respect to any Order concerned.

In addition, when relevant in light of the duration of the Order at stake and notwithstanding the foregoing, the prices of Products shall be revised by ORCHARD once per year, on the anniversary date of ORCHARD's written acceptance of the Order, based upon the evolution of factors including, but not limited to: the cost of raw materials and components, energy, wages and salaries, insurance, packaging, taxes, customs duties and transport costs and the impact on ORCHARD of any change of laws or regulations impacting wages or salaries or social security contributions and/or the composition of Products.

More generally, the price of certain Products shall be established based on minimum quantities previously agreed upon by the Parties. Where appropriate and regardless of the quantities actually ordered, the actual price will be based on the price agreed for such minimum quantities. The minimum quantities will be established on the basis of continuous production.

Unless otherwise provided in ORCHARD's written acceptance of the Order, all prices of the Products shall be deemed to be "ex works" (ICC Incoterm 2020), excluding duties and taxes.

If a discount or any other type of rebate is agreed, it will only be due if the Customer has strictly and completely complied with all its contractual and legal obligations towards ORCHARD.

4.2. Payment. Unless otherwise provided in ORCHARD's written acceptance of the Order, payments shall be made by the Customer within thirty (30) calendar days from the date of invoice, in immediately available funds, by wire or bank transfer, in accordance with the instructions provided by ORCHARD.

Payment shall be net of any deductions, withholdings or other charges, except with ORCHARD's prior written agreement or otherwise expressly indicated in the invoice, the prices of the Products are not subject to any discount or rebate. Payment cannot be refused, delayed or interrupted for any reason. The advance payment of an invoice does not give rise to any discount for the benefit of the Customer.

ORCHARD, at its sole discretion, is entitled to request from Customer that Delivery of the Product be subject to (i) payment having been made prior to delivery or (ii) the prior remittance by the Customer of a documentary credit or other irrevocable and confirmed guarantee by a bank approved by ORCHARD, regardless of the method and place of delivery.

Any delay in payment on the applicable due date in accordance with the terms set out above, of any amounts due to ORCHARD under any Order shall automatically result in, without any requirement for any prior notice and without prejudice to ORCHARD's other rights and remedies: (i) the entire amount, including taxes and charges, to become immediately due and payable (ii) the entire amount bearing interest for each calendar day of late payment calculated on the basis of a rate equal to the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is lower, such interest beginning to accrue from the day after the date on which the principal amounts are due without prior notice, as well as the invoicing by ORCHARD to the Customer of an additional minimum charge of sixty (60) Canadian Dollars as compensation for recovery costs, together with, if the recovery costs actually incurred by ORCHARD are greater exceed such amount, such additional amount as is justified by ORCHARD for recovery costs, or even, if the recovery costs actually incurred are greater than this lump sum, additional compensation on invoicing; (iii) the right for ORCHARD, upon expiry of an eight (8) business days' notice of any other obligations, to terminate or suspend the performance of all its obligations under any Order, to request the immediate payment of all other invoices, which shall, at ORCHARD's option, acting reasonably automatically become due at its discretion, to demand that the Customer return the Products subject to the unpaid Order, at its own risk and expense, or to retake possession of the Products subject to the unpaid Order and any related document on the Customer's premises, without notice. All costs and disbursements (including transfer costs) incurred by ORCHARD for the purpose of such recovery process, will be borne by the Customer. In such circumstances, ORCHARD may require cash payment at the time of recovery or before delivery of any new supply of Products.

The Customer may not invoke any dispute or Product return under the warranty in order to withhold or delay payment for the Products. It is expressly agreed that ORCHARD may set off and deduct any amounts due by the Customer from any amount due to it.

5. Title retention

The Products shall remain the full and exclusive property of ORCHARD until complete payment of all amounts due to it, in principal and interest. Until full payment, the Customer must take all necessary measures to (i) ensure that the delivered Products are stored in good conditions and in such a way as to clearly identify them as Products belonging to ORCHARD, so that they cannot be

confused with products from other suppliers, (ii) safeguard ORCHARD's rights to said Products, (iii) immediately inform ORCHARD of any claim of any third parties relating to the Products/(iv) not obscure, deface or destroy any identifying mark or marking on or relating to the Products.

In the event of total or partial late payment of any invoice, and without prejudice to ORCHARD's other rights and remedies, ORCHARD expressly reserves the right to immediately repossess the Products and Customer shall return the Products, at its own risks and costs within fifteen (15) calendar days following ORCHARD's request.

6. Compliance with regulations – Information

When relevant, more particularly for turnkey projects, the Customer having accepted the technical specifications of the Products, acknowledges having full knowledge of the information, components, design and properties of such Products and their potential contraindications. It is the Customer's sole responsibility to perform any tests on the Products that it considers necessary. The Customer is solely responsible for compliance with the laws and regulations in force on the date of acceptance of the Products for the marketing and use of the Products in their countries/ies of delivery. The Customer shall be solely responsible for meeting the requirements of all applicable Canadian packaging and labelling legislation as well as Quebec's Charter of the French Language or any similar or successor legislation. The Customer shall be solely responsible for the proper information of its clients and end consumers as to the use of the Products and / or their potential contraindications and all consequences which may result therefrom.

7. Force Majeure

ORCHARD will not be liable for breach of its obligations in the event that the performance of such obligations is hindered, prevented or delayed by a case of Force Majeure ("Force Majeure Case"), such as but not limited to any natural disaster, storm, fire, flood, earthquake, accident, interruption of services, epidemic, pandemic, strikes (including strikes affecting the marketing and use of the Products), the blocking of production by employees, interruption and/or delay in loading or transportation, energy failure, embargo, prohibition of trade, shortage of, inability to obtain raw materials and/or components, disruption of public supplies, including but not limited to supply of raw materials, components, formulae, substances, energy or equipment, including failure of the suppliers from whom ORCHARD sources its products, tooling accidents, sabotage, intervention of civil or military authorities, acts of war, declared or undeclared hostilities, terrorist acts, riots.

In each case affecting such events affect ORCHARD or its suppliers or subcontractors. In such an occurrence, ORCHARD's obligations shall be suspended, the deadlines (hereinafter "Contractual Deadlines") for the performance of the Products shall be extended in full and ORCHARD shall have no liability under this warranty or any Force Majeure Case affecting it. In the event of a Force Majeure Case lasting for more than three (3) months, either Party may rescind the Order, with immediate effect, by notifying the other Party by registered letter with acknowledgment of receipt. The Customer must take delivery and pay for all Products manufactured up to the date of rescission and compensate ORCHARD for all other costs and expenses already incurred.

8. Warranty – Limitation of liabilities

8.1. Warranty. ORCHARD warrants on the terms and conditions defined herein, that, on the date of delivery to the Customer, the Products shall conform to the contractual specifications.

The Customer hereby confirms that it is acquiring the Products for its professional needs and that it has the skills and expertise to develop its specifications and to explain its requirements.

The Customer shall provide notice in writing to ORCHARD of all claims under the warranty for apparent defects prior to any use/transformation of the Products and in any event within a period of five (5) weeks following delivery.

The Customer shall provide notice in writing to ORCHARD for all other claims under the warranty, for all non-conformities and defects other than apparent defects, and subject to any other provision hereof, within a period of six (6) months from the date of delivery of the Customer. In either event, the Customer shall provide notice in writing to ORCHARD of such claim within five (5) calendar days of the discovery of the non-conformity or defect.

The Products are considered defective if the defect can be confirmed by ORCHARD upon examination, it being understood that non-conformities shall be determined by reference to the corresponding contractual specifications. If ORCHARD confirms such non-conformity or defect, ORCHARD will then be required, at its sole option, (i) to repair the non-conforming or defective Products, at its expense, or (ii) to replace the non-conforming or defective Products, at its expense, or (iii) to reimburse the Customer on a pro-rata basis for the non-conforming or defective Products. The above constitutes the Customer's sole and exclusive remedy under this warranty. Repairs or replacements of Products made under the warranty may not have the effect of extending the initial duration of the warranty. For the avoidance of doubt, ORCHARD shall have no liability under this warranty if the Customer fails to give notice within the applicable time periods.

The Customer shall comply with the instructions of ORCHARD regarding inter alia storage, preservation or use, including distribution methods, of the Products and the Customer shall inform its own clients or subcontractors of such general instructions which ORCHARD shall have no liability under this warranty or for any loss or damage suffered by the Customer or any third party. The Customer assumes all risks and liabilities resulting from the use of the Products.

In particular, the following defects and non-conformities are specifically excluded from the benefit of this warranty:

defects – non-conformities

- due to non-compliance with ORCHARD's specifications and instructions,
- due to normal wear and tear,
- due to handling, transportation or the mode of transportation used, after transfer of risks,
- due to storage or preservation conditions,
- due to the modifications or requirements provided by the Customer,
- due to the specification of the Products or their use by the Customer or by a third party without the prior written consent of ORCHARD,
- due to abnormal or uncommon use of equivalent products,
- due to the use of the Product as delivered by ORCHARD,
- relating to a Product not intended for sale or any other form of distribution, subject to mandatory applicable laws to the contrary,
- attributable to the design of the final product into which the Product is integrated or with which it is combined by the Customer or by a third party or the instructions of the Customer or the manufacturer of such final product,
- due to Components provided by the Customer or by a third party designated by the Customer
- resulting from the application of mandatory rules of a legal or regulatory nature in force in the Customer's country or in the country of commercial exploitation of the Products, or
- not reasonably known with regard to the state of scientific and technical knowledge at the time of manufacturing.

ORCHARD shall not bear any responsibilities or liabilities relating to (i) any product not supplied by it, or (ii) any integration or combination of the Products with any other good provided by the Customer or any third party.

ORCHARD makes no other warranty, express or implied, relating to the Products, in particular in terms of merchantability, or the suitability of the Products for a particular purpose.

THE FOREGOING WARRANTIES ARE MADE EXPRESSLY IN LIEU OF AND EXCLUDE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES PROVIDED BY STATUTE, COMMON LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

The Customer shall be liable for any claim by third parties brought against it or against ORCHARD relating to the final product in which the ORCHARD Product is integrated or with which it is combined and shall indemnify ORCHARD for all resulting consequences.

8.2. Limitation of liabilities. The Customer shall be solely responsible and have exclusive liability, for any use and commercial exploitation of the Products. More specifically, it is the Customer's sole responsibility to ensure that its intended use of the Products complies with applicable laws in force in the country of use or in the countries of sale of the Products and ORCHARD hereby disclaims and undertakes that it shall not be held liable for any use of the Products by the Customer that would not strictly comply with the characteristics of use expressly stated in the Order accepted in writing by ORCHARD, unless otherwise provided for by mandatory provisions of applicable law.

ORCHARD may only be held liable for breach of its essential obligations hereunder and only for direct and actual damages. Except for bodily injury and wrongful misconduct, ORCHARD's total cumulative liability for any given calendar year, and for any and all claims or actions, losses or damages resulting from or related to the Products, may in no case exceed a maximum total amount equal to fifteen (15) per cent of the amount of the Order that is the subject matter of the Customer's claim or action.

In no event and under no circumstances shall ORCHARD be held liable for any indirect, consequential, special, punitive, exemplary and/or immaterial damages, including, without limitation, loss of profit, loss of income, loss of revenue, operating loss, loss of data, loss of customers, third parties' claims against the Customer, loss of opportunity, damage to image and reputation, moral damages, whether arising out of or in connection with: breach of warranty, breach of contract, or any other claim or action brought against the Customer or ORCHARD. These limitations and exclusions will apply irrespective of whether such damages were foreseeable and could reasonably have been foreseen by ORCHARD.

The Customer, its employees, agents, subcontractors, and their respective insurers, waive all claims and actions against ORCHARD and its employees, agents, subcontractors, and each of their respective insurers, beyond the limit of liability referred to in this Article 8.

9. Assignment of order

ORCHARD is at liberty to subcontract all or part of this Contract and the Orders placed by the Customer to any third party of its choice and to transfer or assign all or any part of this Contract, the Orders and its rights and obligations relating thereto to any third party of its choice, including in particular to any of its affiliated companies subject to notifying the Customer within a reasonable time.

10. Confidentiality – Intellectual property

10.1. Confidentiality. Without prejudice to the provisions here in, the parties hereto have entered into a confidentiality and non-disclosure agreement that may have been executed between the parties prior to the execution of this Contract. The Customer and ORCHARD hereby confirm and undertake that it shall adhere to all measures and practices as it would adopt for security, confidentiality and protection of its own Confidential Information while dealing with Confidential Information of the other Party, whether received directly or indirectly in any medium, and shall not reveal or disclose the Confidential Information, directly or through its representatives or otherwise, to any third party, without the prior written consent of the concerned Party. "Confidential Information" shall mean all technical and non-technical information disclosed by one Party to the other Party in order to defend the Customer against any claim of infringement of third-party patents published in the countries of manufacture of the Products, excluding studies, demonstrators, samples and prototypes for which no such undertaking is granted, provided that the Customer (i) informs ORCHARD without delay in writing of any claim or action against it, (ii) cooperates with ORCHARD in order to provide it with the elements necessary for its defense (iii) leaves ORCHARD in control of its defense and all associated negotiations, subject to any additional defense by the Customer at its own expense and (iv) makes no admission as to the infringement of the industrial property rights of third parties that may be prejudicial to the rebuttal of such claim or action.

In the event of a final court decision ruling that the Products infringe such a third-party patent published in the countries of manufacture of the Products manufactured by ORCHARD, ORCHARD shall, at its expense, have the choice between one of the following solutions: (i) obtain the right for the Customer to continue to use the concerned intellectual property rights of the Products and ORCHARD hereby disclaims and undertakes that it shall not be held liable for any use of the Products by the Customer that would not strictly comply with the characteristics of use expressly stated in the Order accepted in writing by ORCHARD, unless otherwise provided for by mandatory provisions of applicable law; (ii) modify the infringing Products so that they are no longer infringing or (iv) cancel the Order and retrieve the infringing Products at a price equal to that at which they were purchased, reduced by an amount determined by mutual agreement according to their depreciation. The aforementioned warranty will not apply to any claim or action whatsoever based on any of the following grounds: i) ORCHARD's compliance with the Customer's specifications or instructions, ii) use of the Products different from that for which they were intended, (iii) the assembly, use or combination of the Products with any other goods not provided by ORCHARD, or (iv) modification of the Products by the Customer or by a third party.

10.2. Intellectual Property. ORCHARD will retain exclusive ownership of all plans, designs, drawings, sketches, molds, manufacturing drawings, models, specifications, technical and commercial nomenclatures, recommendation documents, test results, catalogues, brochures, notices, patents, models and drawings, manufacturing process, methods and know-how, notes and in general, all written information, all written information and oral communication (collectively the "IP") disclosed to the Customer. Consequently, the Customer is prohibited from making any disclosure, use, adaptation, reproduction or exploitation of the IP of any kind without the prior written consent of ORCHARD. ORCHARD remains free to make any use of the IP.

The Customer shall defend the Customer against any claim of infringement of third-party patents published in the countries of manufacture of the Products, excluding studies, demonstrators, samples and prototypes for which no such undertaking is granted, provided that the Customer (i) informs ORCHARD without delay in writing of any claim or action against it, (ii) cooperates with ORCHARD in order to provide it with the elements necessary for its defense (iii) leaves ORCHARD in control of its defense and all associated negotiations, subject to any additional defense by the Customer at its own expense and (iv) makes no admission as to the infringement of the industrial property rights of third parties that may be prejudicial to the rebuttal of such claim or action.

In the event of a final court decision ruling that the Products infringe such a third-party patent published in the countries of manufacture of the Products manufactured by ORCHARD, ORCHARD shall, at its expense, have the choice between one of the following solutions: (i) obtain the right for the Customer to continue to use the concerned intellectual property rights of the Products and ORCHARD hereby disclaims and undertakes that it shall not be held liable for any use of the Products by the Customer that would not strictly comply with the characteristics of use expressly stated in the Order accepted in writing by ORCHARD, unless otherwise provided for by mandatory provisions of applicable law; (ii) modify the infringing Products so that they are no longer infringing or (iv) cancel the Order and retrieve the infringing Products at a price equal to that at which they were purchased, reduced by an amount determined by mutual agreement according to their depreciation. The aforementioned warranty will not apply to any claim or action whatsoever based on any of the following grounds: i) ORCHARD's compliance with the Customer's specifications or instructions, ii) use of the Products different from that for which they were intended, (iii) the assembly, use or combination of the Products with any other goods not provided by ORCHARD, or (iv) modification of the Products by the Customer or by a third party.

The Customer represents and warrants to ORCHARD that it is the owner of the intellectual property rights or that it has a right to use the components, including designs, models, molds, patents, specifications or any other elements covered by intellectual property rights that it makes available to ORCHARD for the purposes of an Order. The Customer shall defend the Customer against any claim of infringement of third-party patents published in the countries of manufacture of the Products, excluding studies, demonstrators, samples and prototypes for which no such undertaking is granted, provided that the Customer (i) informs ORCHARD without delay in writing of any claim or action against it, (ii) cooperates with ORCHARD in order to provide it with the elements necessary for its defense (iii) leaves ORCHARD in control of its defense and all associated negotiations, subject to any additional defense by the Customer at its own expense and (iv) makes no admission as to the infringement of the industrial property rights of third parties that may be prejudicial to the rebuttal of such claim or action.

In the absence of agreement between the Parties within one (1) month, from the request for changes, each of the Parties will have the right to rescind the applicable Order without compensation or damages, upon expiry of a fifteen (15) calendar day notice addressed to the other Party by registered letter with acknowledgment of receipt. During this notice period, the Order will remain in full force and effect in accordance with its original terms.

12. Non-Solicit

The Customer agrees undertakes not to "solicit," seek to hire, hire, or employ or entrust any work, directly or indirectly, and/or through an intermediary, any employee, officer or director of ORCHARD. This clause remains valid for the entire duration of the Order, including any renewal thereof, if relevant applicable, and in any event, but no less than twelve (12) months from the date of the Order.

The Recipient acknowledges and agrees that the Confidential Information disclosed to the Recipient has a commercial value, is not in the public domain, and that a breach by any Recipient of this Agreement is likely to cause irreparable damage for which the Proprietary Party will not be adequately compensated by monetary damages. The Recipient shall defend the Proprietary Party against any claim of infringement of third-party patents published in the countries of manufacture of the Products by the parties' rights of competent jurisdiction, whether or an interim, preliminary or permanent basis. Nothing in this Agreement is intended, or shall be construed, to limit the Parties' rights to any other remedy for a breach of any provision of this Agreement.

In the event of any breach of the foregoing, the Customer shall be deemed to have admitted and acknowledged its liability to pay ORCHARD a lump sum compensation equal to the gross amount of the Order. The Customer shall be deemed to have admitted and acknowledged its liability to pay ORCHARD a lump sum compensation equal to the date of their departure from ORCHARD or first solicitation, as applicable.

13. Severability

In the event that any provisions of these GTC and/or of any Order is declared null and void or unenforceable, the Parties shall endeavor negotiate in good faith to amend such provision on economically equivalent terms. The other provisions of these GTC and/or any Order shall continue in full force and effect.

14. Applicable Law – Disputes

The validity, construction and performance of these GTC, any Order or any document related thereto for the sale of Products shall be governed by and construed and enforced in accordance with the laws of Ontario, Canada and the federal laws of Canada applicable therein, to the exclusion of its conflict of laws rules.

In the event of a dispute between the Parties, the Parties shall consult each other within fifteen (15) days of notification of a dispute by either Party, to endeavor to find an amicable solution to the dispute. If at the end of such fifteen (15) day period, the Parties have not amicably resolved the dispute, such dispute shall be administered by ADR Chambers conducted according to the ADR Chambers Mediation Rules and the place of the mediation will be in Mississauga, Ontario, upon the initiative of the most diligent party. In case of failure of the mediation within one (1) month following submission of the dispute to such mediation, the Parties will recover their freedom and the dispute will be subject to the exclusive jurisdiction of the courts within the jurisdiction of the Province of Ontario and each of the Parties accepts the exclusive jurisdiction of such courts in connection with these GTC, Order or any document related thereto, provided that ORCHARD shall always have the right to proceed against the Customer in any court of competent jurisdiction where the Customer has its principal place of business, regardless of the place of delivery or even in the event of an incidental claim, a warranty appeal or multiple defendants.

Nothing in this article 14 shall be construed as limitation of the right of either of the Parties to obtain injunctive or other emergency relief or to preserve a remedy which might be barred by time or other reason.

The United Nations Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria, on 11 April 1980 shall not be applicable to any sale or delivery of Products.

15. Language

The language provided by mandatory provisions of the governing law, these GTC, any Order, notices and other document related thereto are established in the English language and this English version shall be the prevailing version of such GTC, Orders and other documents for all purposes. Any translation into another language shall be for convenience only.

16. Personal data

ORCHARD declares complying with regulations applicable to the protection of personal data in its personal data processes, as described in its personal data protection policy available at <https://www.albea-group.com/fr/personal-data>.

These GTC are applicable as of September 1st 2023, to all Orders received from the Customer after such date and replace the GTC previously in force.