

1.1 SCOPE – ENFORCEABILITY

1.2 These general terms and conditions of sale (“GTS”) apply to all orders of innovative dispensing, sealing and active packaging solutions and other packaging products (“PRODUCTS”) placed by any company (hereafter the “CUSTOMER”) with, and accepted by, the entity set out at the bottom of these GTS (“SUPPLIER” or “APTAR”), which is a direct or indirect affiliate of, and is ultimately controlled by, AptarGroup, Inc. In these GTS, CUSTOMER and SUPPLIER are together referred to as the “PARTIES” and individually as a “PARTY”. Even if the CUSTOMER has not signed these GTS, the PARTIES acknowledge and agree that these GTS apply to each ACCEPTED ORDER and prevail over any CUSTOMER terms of purchase, or any other document unilaterally transmitted by the CUSTOMER, when the CUSTOMER purports to apply under any order, confirmation of order or similar document which are not explicitly accepted in writing by the SUPPLIER. These GTS shall also apply to all future orders for PRODUCTS with the CUSTOMER, even if the SUPPLIER does not refer to them again.

1.3 In the event of any discrepancy between the GTS and special terms agreed between the PARTIES in writing (e.g. a negotiated supply agreement) referencing these GTS as an addendum thereto, such special terms shall prevail over these GTS.

1.4 A waiver of any right or remedy under the GTS is only effective if given in writing. The failure of either PARTY to insist, in any one or more instances, upon the performance of any of the terms or conditions of these GTS, or to exercise any right herein, shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.

1.5 If any court or competent authority finds that any provision of the GTS (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the GTS shall not be affected. In such circumstances, the PARTIES shall agree in good faith amendments to these GTS to the extent necessary to secure for the PARTIES’ rights and benefits which are as similar as possible to those provided for in these GTS.

2. DEFINITIONS

2.1 “CONFIDENTIAL INFORMATION” means any information learned by the CUSTOMER in connection with these GTS and/or an ACCEPTED ORDER or disclosed to the CUSTOMER by the SUPPLIER, either directly or indirectly, orally, in writing or by inspection of equipment, materials or processes used by the SUPPLIER including information that is proprietary or confidential to a third party (including, for the avoidance of doubt, any related company of the SUPPLIER). CONFIDENTIAL INFORMATION, expressly includes the Supplier’s INTELLECTUAL PROPERTY RIGHTS, TRADE SECRETS, all information and data relating to the research, development, production, packaging, control, sale and marketing of the SUPPLIER’s products including, but not limited to, economic information, business and technical development plans, pricing, marketing strategy, data, technical information, know-how, prototypes, models, samples, drawings, patents, patent applications, copyrights, improvements and inventions (whether patentable or not) and other works of authorship, process and product information, methods of manufacture, intangible assets, and derivative works made by the CUSTOMER (or a third party on the CUSTOMER’S behalf) that are based on the SUPPLIER’S or third party CONFIDENTIAL INFORMATION.

2.2 “INTELLECTUAL PROPERTY RIGHTS” or “IPR” means patent rights, rights in inventions, copyrights, trademarks, design rights, utility model rights, database rights, know-how, rights in confidential information, goodwill, trade secrets and other intellectual property or similar rights, including improvements thereof, in any part of the world as may exist from time to time, whether registered or unregistered and including the right to apply for registration.

2.3 “TRADE SECRETS” means “trade secrets” as defined in EU Directive 2016/943 on the protection of undisclosed know-how and business information and the national implementing laws.

3. ORDERS

3.1 All quotations issued by the SUPPLIER (each a “QUOTATION”) are (i) an essential aspect of preliminary negotiations between the PARTIES and (ii) as such, no QUOTATION shall be deemed an offer by SUPPLIER to supply the PRODUCTS to CUSTOMER as set forth in the QUOTATION. CUSTOMER’S acceptance of a QUOTATION shall be deemed an offer by the CUSTOMER to purchase PRODUCTS under the conditions of the GTS (“QUOTATION OFFER”).

3.2 Every order for PRODUCTS issued by the CUSTOMER (“ORDER”), regardless of the means by which such ORDER is transmitted (including in any electronic form of transmission), shall be deemed to be an offer by the CUSTOMER to purchase PRODUCTS under the conditions of the GTS.

3.3 The SUPPLIER is not bound by (i) a QUOTATION OFFER; or (ii) any ORDER, unless and until the SUPPLIER has accepted such QUOTATION OFFER or ORDER (each an “ACCEPTED ORDER”) by a written confirmation of such QUOTATION OFFER or ORDER (each an “ORDER CONFIRMATION”).

3.4 All QUOTATIONS issued by the SUPPLIER are valid for a period of 30 calendar days unless the QUOTATION expressly sets out a different period.

3.5 The SUPPLIER may, at its sole discretion accept or reject any CUSTOMER requested cancellations or modifications to an ACCEPTED ORDER. For the avoidance of doubt, where a request is made to cancel or modify an ACCEPTED ORDER and such request is refused, the ACCEPTED ORDER shall continue in full force and effect.

3.6 If the SUPPLIER accepts a CUSTOMER proposed change in any ACCEPTED ORDER, such change shall be formalized by the issue of a new ORDER CONFIRMATION, which shall, in addition to updating the original ACCEPTED ORDER to reflect the change, specify the amount of any expenses and/or costs incurred by the SUPPLIER due to such change (“EXPENSES”). The new ORDER CONFIRMATION shall replace the original ACCEPTED ORDER and be binding on the SUPPLIER and the CUSTOMER after such new ORDER CONFIRMATION would have been issued to the CUSTOMER.

3.7 If the SUPPLIER accepts a CUSTOMER cancellation, the SUPPLIER shall invoice any expenses and/or costs incurred by the SUPPLIER due to such cancellation and shall apply a minimum cancellation fee equivalent to 20% of the relevant order.

4. MANUFACTURING – QUANTITIES

4.1 The SUPPLIER’S PRODUCTS are manufactured, packed and delivered in accordance with the provisions of SUPPLIER’S (i) standard quality agreements, (ii) standard technical or packaging specifications, and (iii) standard logistics requirements (such documentation and information being the “SPECIFICATIONS”).

4.2 When the CUSTOMER requires the SUPPLIER to source components or sub-assemblies, or to subcontract services, from the CUSTOMER or suppliers designated by the CUSTOMER, the SUPPLIER shall have no responsibility for the quality, suitability or supply of such goods or services.

4.3 The minimum quantity of PRODUCTS per ORDER and/or delivery (“MOQ”) is stated on the SUPPLIER’S quotation and ORDER CONFIRMATION for standard and customized PRODUCTS.

4.4 Every ORDER of PRODUCTS delivered may be up to 5% greater or less than the quantity specified in the ORDER CONFIRMATION and such variation shall not be a breach of these GTS and the SUPPLIER shall be entitled to submit an invoice in respect of the quantity actually delivered. If the quantity of PRODUCTS delivered by the SUPPLIER is more than 5% greater than the quantity specified in the ORDER CONFIRMATION, the CUSTOMER shall be entitled to either accept or reject the PRODUCTS in excess of the 5% upper limit. If the CUSTOMER accepts such PRODUCTS, such over delivery shall not be a breach of these GTS and the SUPPLIER shall be entitled to submit an invoice in respect of the quantity actually delivered.

5. DELIVERIES

5.1 The PRODUCTS are sold FCA SUPPLIER’S production site (Incoterms 2020). For the avoidance of doubt, references to PRODUCTS being “delivered” and the “delivery” thereof in these GTS shall be interpreted in light of FCA (Incoterms 2020).

5.2 If the CUSTOMER fails to collect the PRODUCTS on the delivery date set out in the ORDER CONFIRMATION, the SUPPLIER reserves the right to invoice storage expenses of 2.5% of the price stated on the ORDER CONFIRMATION per month until the PRODUCTS are collected. If the PRODUCTS have not been collected within 60 calendar days from the agreed delivery date, the SUPPLIER shall be entitled, without prejudice to its other rights and remedies, to (i) sell the PRODUCTS to a third party or to (ii) invoice CUSTOMER for such PRODUCTS if such PRODUCTS cannot be sold to a third party. The CUSTOMER shall be liable for any and all fees, expenses and charges incurred by the SUPPLIER in connection with such sale.

5.3 Lead times and delivery dates quoted in ORDER CONFIRMATION are given for guidance only. The SUPPLIER shall make reasonable commercial efforts to adhere such dates, but time shall not be of the essence in this regard. The SUPPLIER shall not be liable for any delay in delivery of the PRODUCTS caused by a FORCE MAJEURE EVENT as defined in Article 11, or the CUSTOMER’S failure to provide the SUPPLIER with adequate delivery instructions or any other instructions that are relevant to the supply of the PRODUCTS.

5.4 Notwithstanding Article 5.2, lead times shall not commence until the CUSTOMER has provided the SUPPLIER with all the technical information required to process the ORDER and/or to set up the means of credit or payment stated in the ORDER CONFIRMATION.

5.5 In case of Intra-Community supply, CUSTOMER shall provide SUPPLIER, by the 10th day of the month following the month of supply, with all necessary documents for SUPPLIER to benefit from the VAT exemption as required by European and local rules in force at the time of delivery. If SUPPLIER is denied VAT exemption on the Intra-Community supply due to CUSTOMER’S lack of compliance with this provision, CUSTOMER shall bear the corresponding VAT, interest and penalties levied on SUPPLIER.

6. PRICE – PAYMENT

6.1 The PRODUCTS are invoiced by the SUPPLIER on or following delivery at the price stated in the ORDER CONFIRMATION or, in the event that the ORDER CONFIRMATION does not state a price, at the current price list on the date of the ORDER CONFIRMATION. The price of the PRODUCTS excludes packaging and transport costs and expenses, VAT and any other duties or taxes, which are billed in addition to the price, where applicable.

6.2 Invoices are payable in the currency agreed within 30 calendar days from the invoice date by bank transfer. If no particular currency has been agreed, Invoices resulting from foreign commerce shall be pay in USD, and Invoices resulting from domestic commerce shall be pay in Colombian pesos - COP. No discounts for early payment are granted. Any payment transaction expenses shall be solely borne by the CUSTOMER. No payment will be deemed received until the purchase price has been credited to the SUPPLIER’S bank account.

6.3 The SUPPLIER may require pre-payment, payment guarantees (deposit or other) or change any of its payment terms at any time, in particular if information on the CUSTOMER’S financial situation indicates there is a risk of non-payment of the purchase price of the PRODUCTS.

6.4 Any partial payments by CUSTOMER shall be allocated in the following order of priority (i) outstanding invoices (oldest first); (ii) any late payment interest; and (iii) payment of expenses incurred by the SUPPLIER in recovering late payments.

6.5 Any delay in payment shall give rise to the application of interest for late payment at the highest interest rate then permitted by the Superintendent of Finance of Colombia, or the competent authority. In addition, the CUSTOMER agrees that the SUPPLIER shall be entitled to charge the CUSTOMER for any expenses it incurs in recovering late payments.

6.6 If an invoice has not been fully paid on the due date, the SUPPLIER, in its sole discretion, set a reasonable remedy period for such payment and/or, without prejudice to any of its other rights and remedies, (i) cancel and/or suspend the processing of any other ORDER for PRODUCTS which have been accepted pursuant to these GTS or any other terms between the PARTIES; and/or (ii) require immediate payment of any outstanding sum still owed; and/or (iii) demand payment guarantees or pre-payment upon any future order for products; and/or (iv) demand that the PRODUCTS are returned to SUPPLIER and, following such demand, the CUSTOMER shall promptly, but in any event within 7 calendar days, return such PRODUCTS to the SUPPLIER at the expense and risk of the CUSTOMER.

6.7 The CUSTOMER shall pay all amounts due under an ORDER in full without any deduction or withholding, except as required by law. If any such deduction or withholding is required, the CUSTOMER shall, when making the payment to which the deduction or withholding relates, pay to the SUPPLIER such additional amount as will ensure that the SUPPLIER receives the same total amount that it would have received if no such deduction or withholding had been required.

6.8 Any sums payable under these GTS do not include any federal, state or local property, license, privilege sales, service, use, excise, value added, gross receipts, charges, duties, fees or other like taxes of any nature applied now or in the future unless explicitly included on the invoice in writing. Where applicable, value added tax or any other tax of any nature will be invoiced by SUPPLIER immediately in addition to any sum in respect of which they are calculated and shall be paid by CUSTOMER in full without deductions. When relevant, the PARTIES will timely pay the amount of taxes levied and will provide each other with official tax certificates, other evidences of tax obligation together with proof of payments or any equivalent documentation required under applicable law. The PARTIES also agree to use reasonable efforts to cooperate with each other in order to legally minimize or eliminate any above mentioned tax of any nature, when possible.

6.9 Any down payments made by the CUSTOMER shall not be reimbursed by SUPPLIER but set-off as a credit on future invoices, if any.

7. TITLE – RISKS

7.1 The SUPPLIER shall retain title to the PRODUCTS until full payment of their price, interest and additional costs, together with all other sums which are, or which become, due to the SUPPLIER from the CUSTOMER related to the PRODUCTS. The SUPPLIER shall be entitled to take any actions legally required or necessary to ensure and maintain any retention of title subject to the applicable national legislation.

7.2 Risk in the PRODUCTS is transferred to the CUSTOMER upon delivery of the PRODUCTS as defined in Article 5 or in accordance with the Incoterm 2020 referred to in the ORDER. As of the time of delivery, the CUSTOMER bears all risks of loss or damage to the PRODUCTS. The CUSTOMER warrants that it has subscribed to an insurance policy at a reputable insurer that covers any damage or loss that may be caused to the PRODUCTS from the time of their delivery, including but not limited to loss, theft, fire, water damage and natural hazard. The CUSTOMER shall upon request by the SUPPLIER produce a copy of the policy of insurance. Until title to the PRODUCTS has passed to the CUSTOMER, the CUSTOMER shall (i) make sure that the PRODUCTS are easily identifiable, including, without limitation, by storing the PRODUCTS (at no cost to the SUPPLIER) separately from all other products of the CUSTOMER or any third party; and (ii) maintain the PRODUCTS in satisfactory condition.

7.4 Until title to the PRODUCTS has passed to the CUSTOMER, the CUSTOMER may use, process, consume or resell PRODUCTS only in the course of the CUSTOMER’S normal and usual business (e.g. manufacturing, filling and assembly processes).

7.5 Regardless of reservation of ownership on the PRODUCTS, SUPPLIER shall be entitled to recover payment for the PRODUCTS. Prior to payment of the relevant invoice by the CUSTOMER, the CUSTOMER’S right to possession, use and resale of the PRODUCTS shall terminate immediately if: (i) the CUSTOMER ceases to trade or appears in the reasonable opinion of the SUPPLIER to be likely to cease to trade or is subject to insolvency proceedings as defined under applicable national legislation; (ii) the CUSTOMER fails to pay any sum due to the SUPPLIER concerning an ACCEPTED ORDER or any other contract between the CUSTOMER and the SUPPLIER; (iii) the CUSTOMER encumbers, pledges or in any other way charges any of the PRODUCTS; or (iv) the ACCEPTED ORDER is terminated for any reason.

7.7 The CUSTOMER shall allow the SUPPLIER, its agents, employees and sub-contractors the right, at any time, to enter any premises where the PRODUCTS are or may be stored in order to inspect them, and, if the CUSTOMER’S right to possession, use and resale of the PRODUCT has expired or terminated, to recover them.

7.8 The SUPPLIER’S rights contained in this Article 7 shall survive termination of any ACCEPTED ORDER or these GTS.

8. WARRANTY

8.1 The SUPPLIER warrants that on delivery, and for a period of 12 months from the date of delivery (“WARRANTY PERIOD”), the PRODUCTS shall: (i) materially comply with the SPECIFICATIONS; (ii) be free from material defects in design, material and workmanship.

8.2 The SUPPLIER shall, to the fullest extent permitted by law, have no responsibility or liability whatsoever for suitability, adaptability or compatibility of the PRODUCTS with the CUSTOMER’S needs for the purposes of manufacturing finished, semi-finished or intermediate products, for the purposes of incorporating the PRODUCTS into other products and for the use of the PRODUCTS in the dispensing or spraying of any content. The SUPPLIER shall also, to the fullest extent permitted by law, have no responsibility or liability whatsoever in respect of third party infringement or misappropriation claims (particularly infringement or misappropriation of IPRs) concerning PRODUCTS (including but not limited to the design of the PRODUCT or its visual specifications).

8.3 Notwithstanding any technical advice provided by the SUPPLIER, whether verbally or in writing, or any tests (particularly technical approval tests) carried out by the SUPPLIER at the CUSTOMER’S request, it is the sole responsibility of the CUSTOMER to: (i) choose the PRODUCTS and define any special or customized technical or packaging specifications for the PRODUCTS; (ii) ensure that the PRODUCTS that it orders from the SUPPLIER are suitable for their intended use; (iii) ensure the PRODUCTS are compatible with the content and other components that the CUSTOMER is to put in the finished packaging and products sold by the CUSTOMER; (iv) ensure compliance with all applicable regulations of the finished products that it markets; and (v) ensure that the customized specifications and/or instructions notified to the SUPPLIER do not and will not infringe or misappropriate the rights of third parties (including but not limited to infringement or misappropriation of IPRs).

8.4 The CUSTOMER hereby acknowledges and agrees that, to the extent that any services are provided by SUPPLIER to the CUSTOMER, such services are provided on an “as is” basis. Subject to Article 10.1, (i) the receipt of any services and any reliance thereon by the CUSTOMER is entirely at the CUSTOMER’S risk; and (ii) SUPPLIER accepts no liability to the CUSTOMER, and the CUSTOMER acknowledges and agrees that SUPPLIER has no liability to the CUSTOMER, in respect of any such services. The SUPPLIER shall, to the fullest extent permitted by law, have no responsibility or liability whatsoever in relation to the PRODUCTS in the event of: (i) changes or alterations made to the PRODUCTS by the CUSTOMER; (ii) incorrect use, storage of the PRODUCTS (particularly their use-by date or after expiration date) and/or non-compliance with instructions provided by the SUPPLIER, (iii) negligence and/or failure to maintain the PRODUCTS by the CUSTOMER; or (iv) normal wear and tear of the PRODUCTS.

8.5 The CUSTOMER undertakes to inform its own customers, suppliers or contractors of the conditions and limits in respect of the use and storage of the PRODUCTS.

8.6 The SUPPLIER excludes any guarantee or warranty in respect of the components or materials provided by the CUSTOMER and shall not perform any quality checks prior to their use in manufacturing the PRODUCTS. Any components and materials provided by the CUSTOMER shall be deemed to be compliant with the CUSTOMER’S requirements and with all applicable legislation and regulations and the CUSTOMER shall have sole responsibility to check such compliance.

8.7 Notwithstanding anything to the contrary in the GTS or any ORDER, prototypes, samples and other development products supplied by SUPPLIER are not for commercial use and are only made available “AS-IS” and without any representation or warranty, express or implied. SUPPLIER accepts no liability to the CUSTOMER in respect of any such prototypes, samples and other development products.

8.8 Except as set out in these GTS all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

9. RECEIPT CONTROL – COMPLAINTS

9.1 All PRODUCTS shall be examined upon delivery by the CUSTOMER in order to check their compliance with an ACCEPTED ORDER and the SPECIFICATIONS. For PRODUCTS delivered by the SUPPLIER under a SUPPLIER quality assurance the provisions of the relevant SUPPLIER quality assurance contracts apply.

9.2 The CUSTOMER shall, within 3 calendar days after discovery, but not later than 21 calendar days of the date of delivery of the PRODUCTS, inform the SUPPLIER in writing of any non-compliance or defects of the PRODUCTS apparent on a reasonable inspection (or that would have been apparent on a reasonable inspection had it been carried out), without prejudice to any claim against the carriers, in accordance with Article 9.5 below. Failing any notification of a claim within such 21 calendar day period, the CUSTOMER shall be considered as having accepted delivery and the SUPPLIER shall, subject to Article 9.3, no longer be liable (whether in contract, tort (including negligence), for breach of statutory duty, restitution or otherwise) with respect to the non-compliance of the delivered PRODUCTS.

9.3 Subject to Article 9.4, in the event that delivered PRODUCTS prove non-compliant or defective for reasons that are not attributable to the CUSTOMER (or any third party acting on behalf of the CUSTOMER) and such non-compliances or defects could not have been apparent on reasonable inspection made in accordance with Article 9.1 (“HIDDEN DEFECTS”), the CUSTOMER shall immediately inform the SUPPLIER of its claims in that respect, at the latest within 3 business days following the discovery of the non-compliance or defects. Failing any claim within that 3 business day period, the SUPPLIER will no longer be held liable with respect to any non-compliance or defects of the delivered PRODUCTS that could not be observed upon such delivery.

9.4 The CUSTOMER agrees that, in respect of a HIDDEN DEFECT, the SUPPLIER shall have no liability to the CUSTOMER (whether in contract, tort (including negligence), for breach of statutory duty, restitution or otherwise), in respect of any claim relating to any non-compliance or defects of its PRODUCTS to the extent that such claim is brought on or after the date which is 365 days from the date of delivery. For the avoidance of doubt, the limitation period set out in this Article 9.4 shall in no way extend the 21 day limitation period set out in Article 9.2 in respect of non-compliance or defects which are not HIDDEN DEFECTS.

9.5 The CUSTOMER shall take all necessary measures as soon as it discovers a defect of PRODUCTS or non-compliance with the SPECIFICATIONS, including the possible immediate stoppage of its production, to limit any harmful consequences that such defect or non-compliance may have.

- 9.6 In case of any alleged non-compliance or defect of the PRODUCTS, the CUSTOMER shall provide to either the SUPPLIER's quality department or to the SUPPLIER's sales administration department, within 14 calendar days of its discovery, (i) complete and accurate details of the alleged non-compliance or defect (including by reference to the provisions of any quality agreements where applicable); (ii) all necessary information requested by the SUPPLIER, including traceability items, for the purposes of analyzing the origin of the defect or non-compliance; and (iii) samples of such defective or non-compliant PRODUCTS. The SUPPLIER shall, acting reasonably and in good faith, determine whether the samples are defective or non-compliant without undue delay. The CUSTOMER may not return any PRODUCTS (other than the relevant samples referred to above) to the SUPPLIER unless a defect or non-compliance is determined by the SUPPLIER. If the SUPPLIER determines that the samples are not defective or non-compliant then the SUPPLIER shall return the relevant PRODUCTS to the CUSTOMER and the CUSTOMER shall reimburse the SUPPLIER for any expenses incurred by the SUPPLIER in examining the allegedly defective PRODUCTS and returning them. The CUSTOMER shall not, unless agreed otherwise in writing beforehand by the SUPPLIER, be entitled to make or permit a third party to make any repair to the Product that the CUSTOMER deems non-compliant or defective.
- 9.7 If the CUSTOMER and the SUPPLIER disagree on the existence, nature, extent or origin of a non-compliance or defect in relation to the PRODUCTS, an independent expert, chosen by the SUPPLIER, acting reasonably and in good faith, may be called upon to determine the root cause of any alleged defect. The findings of such expert shall be considered definitive and binding on both PARTIES. The cost of the analysis shall be borne by the PARTY to whom the defect or non-compliance of a PRODUCT is attributable or, by the CUSTOMER where no defect or non-compliance is present in a PRODUCT.
- 9.8 The CUSTOMER agrees that any variations or differences observed in the PRODUCTS from models, prototypes or mock-ups, drawings, brochures, websites and advertising, which are for guidance only, may not be considered as defects or non-compliance.
- 9.9 In the event of a delivery of PRODUCTS expressly acknowledged by the SUPPLIER in writing as non-compliant or defective and referring to this Article 9, the SUPPLIER shall rework or replace the PRODUCTS within newly agreed times for manufacturing and delivering the PRODUCTS. If the SUPPLIER is unwilling or unable to rework or replace the PRODUCTS, especially if there is an inappropriate delay caused by the SUPPLIER or if rework or replacement has failed, the CUSTOMER shall be entitled to rescind the ACCEPTED ORDER. A failure to rework or replace the PRODUCT shall only be deemed to have occurred after an attempt to rework or replace has been unsuccessful and, in such circumstances, the CUSTOMER's right to claim damages shall be subject to Article 10.
- 9.10 The CUSTOMER shall make available to the SUPPLIER the defective PRODUCTS or shall return them after the SUPPLIER's prior authorization in good condition and in their original packaging to the extent possible. The SUPPLIER shall bear any transport costs in relation thereto, as well as any transport costs for the replaced or repaired PRODUCTS.
- 9.11 If the SUPPLIER provides prior written consent, the CUSTOMER shall destroy any defective PRODUCTS at the SUPPLIER's expense and in accordance with any applicable legal and regulatory requirements. In such circumstances, the CUSTOMER shall provide the SUPPLIER with a destruction certificate.
- 9.12 The remedies set out in this Article 9 in respect of a PRODUCT's failure to comply with the warranty set out in Article 8.1, are the sole and exclusive remedies available to the CUSTOMER and the sole and exclusive liability of the SUPPLIER.
- 10. LIABILITY**
- 10.1 The SUPPLIER shall be liable to the CUSTOMER for all direct losses arising out of or in connection with these GTS and an ACCEPTED ORDER save that, notwithstanding any other provision in these GTS, but subject to Article 10.2, the SUPPLIER shall have no liability to the CUSTOMER (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any (i) loss of components and manufacturing costs of finished, semi-finished or intermediate products of the CUSTOMER; or (ii) costs incurred by the CUSTOMER in procuring substitute products; or (iii) loss of revenue, loss of profit (whether direct or indirect); or (iv) loss of business, depletion of goodwill, loss of reputation; or (v) any third party claims against the CUSTOMER or any compensation or other payment made by the CUSTOMER to its Customers; or (vi) indirect or consequential loss.
- 10.2 The SUPPLIER does not exclude its liability (if any) to the CUSTOMER for: (i) wilful misconduct or gross negligence; (ii) damages arising out of death or personal injury caused by the SUPPLIER; (iii) fraud and/or fraudulent misrepresentation; (iv) any matter for which it would be illegal for the SUPPLIER to exclude or to attempt to exclude its liability.
- 10.3 Notwithstanding any other provision in these GTS, but subject to Articles 10.1 and 10.2, and to the extent permitted by law for Article 10.2, the SUPPLIER's maximum aggregate liability to the CUSTOMER arising out of or in connection with these GTS and the ACCEPTED ORDER, whether in contract, tort, misrepresentation, under statute or otherwise, including by negligence (or the negligence of a person for whom the SUPPLIER is vicariously responsible) shall not exceed 150% of the sales price of the relevant batch of Products giving rise to the claim.
- 10.4 Each of the SUPPLIER's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability in these GTS in that person's own name and for that person's own benefit, as if the words "its employees, agents and sub-contractors" followed the word SUPPLIER wherever it appears in those clauses.
- 11. FORCE MAJEURE**
- 11.1 In the event that the SUPPLIER is prevented from performing any of its obligations under an ACCEPTED ORDER and these GTS by an event which is outside its reasonable control including but not limited to product unavailability, carrier delays, delays due to fire, flood, storm, severe weather conditions, epidemics and/or pandemics, failure of power, labor disputes, acts of war, terrorism, embargos, shortages of supplies of raw materials or components or acts of any government or agency (a "FORCE MAJEURE EVENT"), the SUPPLIER shall not be liable for such failure to the CUSTOMER. Without prejudice to the foregoing, in such circumstances, the SUPPLIER may, at its discretion, cancel an ACCEPTED ORDER, suspend its execution, postpone the date of delivery or assign the ACCEPTED ORDER to another group company of the SUPPLIER. If a FORCE MAJEURE EVENT occurs which prevents the SUPPLIER from performing any of its obligations, the SUPPLIER shall inform the CUSTOMER without delay and seek a resolution with the CUSTOMER. In the event an ACCEPTED ORDER is suspended or the delivery date postponed, the CUSTOMER shall take all necessary measures to extend, at its expense, the validity of the means of payment while such ORDER is suspended and until delivery can be made.
- 12. CONFIDENTIALITY**
- 12.1 The CUSTOMER undertakes, for the duration of its business relationship with SUPPLIER and for 10 years thereafter ("TERM"), to keep confidential, not to use CONFIDENTIAL INFORMATION. However, any TRADE SECRETS shall remain confidential even after the TERM. Confidentiality obligations do not apply to CONFIDENTIAL INFORMATION that is in the public domain or has entered the public domain other than by the CUSTOMER's breach of confidentiality, that is lawfully received from third parties, or to the extent the CUSTOMER is compelled to by the law or by governmental or judicial order.
- 12.2 CUSTOMER agrees that SUPPLIER will suffer irreparable harm in the event of a violation by CUSTOMER of its covenants under this clause 12, the monetary value of which is impossible to ascertain. Accordingly, in such event, SUPPLIER shall be entitled to injunctive and other equitable relief in addition to whatever other remedies it may possess, without the necessity of posting a bond or other security. Notwithstanding the foregoing, CUSTOMER shall be fully liable to SUPPLIER for all damages, including lost profits, related to a breach of this clause 12.
- 12.3 The CUSTOMER shall not analyse, attempt to modify or reverse-engineer or otherwise seek to determine the structure of any PRODUCTS or any other APTAR technology.
- 13. INTELLECTUAL PROPERTY**
- 13.1 The SUPPLIER does not transfer to the CUSTOMER any IPRs in connection with or attached to the PRODUCTS resulting from the supply, design and/or manufacturing of the PRODUCTS and/or any studies and analyses made by the SUPPLIER in regard to the design and manufacturing of PRODUCTS for a CUSTOMER (including but not limited to in relation to any customized technical specifications created for CUSTOMER, for the purposes of developing a new PRODUCT with respect to a research and development agreement, or for the purposes of improving the quality and the cost price of PRODUCTS) and all such IPRs in relation to the same shall remain the exclusive property of the SUPPLIER (or its licensors).
- 13.2 The CUSTOMER shall indemnify the SUPPLIER for all losses, cost, demands, reasonable expenses (including legal expenses) in respect of any claims, proceedings or allegations that may be brought by third parties alleging an infringement or misappropriation of their rights (including IPRs or unfair competition) in relation to (i) the PRODUCTS manufactured by the SUPPLIER in accordance with the specifications or instructions given by the CUSTOMER or (ii) finished, semi-finished or intermediate PRODUCTS supplied by the CUSTOMER or on its behalf.
- 13.3 The CUSTOMER shall, at its own cost, execute such further documents, take such actions and do such things, as may be requested by the SUPPLIER to give full effect to Article 13.1.
- 14. DATA PROTECTION COMPLIANCE**
- 14.1 Both PARTIES shall comply with all applicable requirements of the Regulation EU 2016/67 ("GDPR") and any applicable national legislation relating to the processing of personal data and data privacy (together with the GDPR "DATA PROTECTION LEGISLATION"). Any defined terms not defined in this clause have the meaning as defined in the GDPR. The PARTIES acknowledge and agree that any PERSONAL DATA provided by one PARTY to the other shall be a transfer of PERSONAL DATA between DATA CONTROLLERS (although the PARTIES acknowledge and agree that they are DATA CONTROLLERS in common in respect of the PERSONAL DATA rather than "JOINT CONTROLLERS" (as such term is defined in the GDPR)). The processing of CUSTOMER's personal data shall be processed in accordance with SUPPLIER's Privacy Policy available at <https://www.aptar.com/general-terms-and-conditions-of-use/>, which CUSTOMER acknowledges and accepts.
- 15. ANTI BRIBERY & ECONOMIC SANCTIONS**
- 15.1 The CUSTOMER shall undertake to comply with all applicable economic sanctions and export controls legislation. If, at any time, a legislation renders the performance of the SUPPLIER'S duties impossible or illegal, the SUPPLIER shall be entitled to cancel the ACCEPTED ORDER and terminate the relationship with the CUSTOMER without any liability for the SUPPLIER.
- 15.2 The CUSTOMER shall (i) comply with the requirements of all applicable anti-bribery legislation both national and foreign, including the UK Bribery Act 2010, the U.S. Foreign Corrupt Practices Act and the French "Loi Sapin II", and not make, promise, offer to make, accept or solicit any payment or transfer anything of value (directly or indirectly) to any (a) individual, (b) corporation, (c) association, (d) partnership, or (e) public body who, whether or not acting in its official capacity, is in a position to influence, secure, or retain any business and/or provide any financial or other advantage to itself or APTAR; (ii) maintain accurate books of account and records in relation to the ORDER and at APTAR's request make them available for inspection.
- 15.3 Breach by the CUSTOMER of the terms of this clause 15 will be deemed a material breach and APTAR may immediately terminate the ACCEPTED ORDER at any time with immediate effect.
- 16. MISCELLANEOUS**
- 16.1 These GTS and an ACCEPTED ORDER shall not create, nor shall it be construed as creating, any partnership or agency relationship between the PARTIES.
- 16.2 Save as otherwise expressly provided in these GTS or an ACCEPTED ORDER, no provisions of these GTS or an ACCEPTED ORDER shall be enforceable by any third party.
- 16.3 These GTS and an ACCEPTED ORDER (together with any documents referred to herein or therein and including, for the avoidance of doubt, the SPECIFICATIONS) contain the entire agreement and understanding of the PARTIES and supersede all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of these GTS and any such document. The CUSTOMER acknowledges that it is entering into these GTS and any ACCEPTED ORDER without reliance on any undertaking, warranty or representation given by or on behalf of the SUPPLIER other than as expressly contained in these GTS and any ACCEPTED ORDER, provided that nothing in this Article shall limit or exclude the liability of the SUPPLIER for fraud or fraudulent misrepresentation.
- 16.4 The PARTIES agree that the United Kingdom's withdrawal from the European Union may have an impact on the market for the PRODUCTS and/or the business of APTAR. As such, if APTAR concludes that it is necessary or desirable to change the terms of an ACCEPTED ORDER due to the United Kingdom's withdrawal from the European Union, then APTAR shall notify CUSTOMER in respect of the same and the PARTIES shall in good faith seek to agree relevant variations to the ACCEPTED ORDER as soon as reasonably practicable and in any event within 10 calendar days of APTAR's notice. APTAR's obligations in respect of the relevant ACCEPTED ORDER shall be suspended whilst the PARTIES attempt to agree the variation. If the PARTIES cannot agree an amendment with the 10 calendar day period then APTAR shall, without liability, be entitled to immediately terminate the ACCEPTED ORDER.
- 16.5 Subject to clause 12 and notwithstanding any IPRs owned by CUSTOMER, the SUPPLIER may exhibit, mention or present in multimedia formats in the public domain, including but not limited to trade fairs, exhibitions or shows, and in any press release or advertising or commercial material, any of the CUSTOMER's finished products incorporating the PRODUCTS provided by the SUPPLIER. Any such exhibition shall be for the purpose of the promotion of the SUPPLIER's own PRODUCTS. To this extent, CUSTOMER hereby grants SUPPLIER a free, royalty-free license to reproduce, distribute, communicate to the public and make available to the public by all means of dissemination, in all territories, and for the duration of these GTS, the IPRs owned by CUSTOMER solely for the purposes and as stated in this clause.
- 17. APPLICABLE LAW - JURISDICTION**
- 17.1 The GTS, the ACCEPTED ORDER and all contracts entered into under them and the rights and obligations of the PARTIES (whether contractual or non-contractual) shall be governed by, and construed in accordance with, the laws of Colombia. The Vienna Convention of April 11th, 1980 on international sales of goods is hereby excluded.
- 17.2 The courts of the jurisdiction of the SUPPLIER's registered office at the time of the SUPPLIER'S ORDER CONFIRMATION shall have exclusive jurisdiction in respect of any claim or matter arising under or in connection with the GTS, the ACCEPTED ORDER and all contracts entered into under them or the legal relationships (including any non-contractual obligations) established thereunder or in connection therewith.