

**General Conditions of Sale of  
Previnil - Empresa Preparadora de Compostos Vinílicos, S.A.  
established in Alverca, Portugal**

**1. General.**

- 1.1. These General Conditions of Sale shall be applicable to all offers, order confirmations, deliveries of products (hereinafter referred to as "Product") by Previnil, S.A. (hereinafter referred to as "Seller") to a customer (hereinafter referred to as "Buyer") and any sales agreements, and shall form an integral part of the agreement ("Sales Agreement"). No other general conditions – of the Buyer or otherwise – shall be applicable or set aside these General Conditions of Sale unless expressly agreed to by Seller in writing.
- 1.2. Neither of the parties shall be entitled without the written concurrence of the other party to transfer the Sales Agreement or all or some of its rights, obligations or liabilities under the Sales Agreement to a third party (and this shall have property law effect). Seller shall, however, at all times be entitled to transfer the Sales Agreement or its rights, obligations and liabilities thereunder to a Group company by simple written notification to a Buyer. In these General Conditions of Sale "Group company" shall mean any legal entity or corporation in which Shin-Etsu Chemical Corporation Ltd. has a direct or indirect holding of at least 50% of the voting capital.
- 1.3. Any deviation from the provisions of the present General Conditions of Sale shall be effective only if and in so far as Seller has expressly agreed upon such departure in writing.

**2. Formation of the contract.**

- 2.1. Quotations or offers – whether oral, in writing or otherwise – made by Seller shall be without engagement unless explicitly stated otherwise. The Sales Agreement between Seller and Buyer shall be formed by the confirmation of the order by Seller. If Seller will have commenced the execution of that order before confirming the order to the Buyer, the order itself will be considered sufficient to settle the Agreement.
- 2.2. Seller is allowed to accept and reject orders of Buyer at its sole discretion. Buyer will be entitled to cancel an order only after receiving written consent from Seller, which consent may be made subject to conditions as deemed appropriate by Seller.
- 2.3. Any and all images and specifications of Products in catalogues, price lists, advertisements, etc. must be deemed to be representations by approximation only, unless Seller has explicitly indicated the contrary in writing with regard to a specific delivery.

**3. Delivery.**

- 3.1. Deliveries of Product will be made only at the agreed supply point. Conditions of delivery will be interpreted on the basis of the Incoterms, latest published by the International Chamber of Commerce, as at the date of the Sales Agreement. Title to the Product shall pass to Buyer in accordance with Article 4 below.
- 3.2. Buyer is obliged to accept delivery of the Products upon Seller's first request thereto. If Buyer fails to accept delivery, it will be liable for all costs and damages resulting therefrom, including but not limited to the costs of storing and re-delivering the Products.
- 3.3. If the Sales Agreement provides for more than one delivery/offtake, the deliveries/offtakes shall, unless otherwise agreed, be effected at regular intervals over the contract period. If Buyer requests a reduction in the agreed quantity and Seller agrees to such reduction (without having any obligation to do so), thereafter Seller's supply obligation hereunder may not exceed the monthly average of the purchases of Product by Buyer from Seller during the immediate preceding three (3) month period. If Buyer takes a quantity of Product, during any period for which an offtake obligation exists, that is smaller than Buyer's obligatory offtake for that period, Seller shall not be obliged, without prejudice to its right to demand fulfilment and/or damages, to deliver the offtake shortfall after elapse of that period. If Seller fails to deliver quantities of Product agreed for any period, Buyer shall not be obliged to take these quantities afterwards either.
- 3.4. The quantities stated in shipping documents such as weight certificates, bill of lading and freight receipts shall be deemed correct unless proven to be incorrect. Weighing and measurements in accordance with Seller's usual methods are decisive.
- 3.5. Package material may be charged to Buyer supplementary and unless agreed otherwise will not be taken back. Should Seller, however, be obliged by law or any regulations to take packaging back, any costs related to taking back or processing packaging will be borne by Buyer.
- 3.6. Seller reserves the right to refuse to deliver any Products into Buyer's nominated silo or room, including but not limited to vessels, vehicles and containers, or equipment which Seller in its sole judgement determines are unsuitable and Buyer shall reimburse Seller any damage resulting from such refusal. For the purpose of these General Conditions "Equipment" means any demountable

container, tank, bulk liquid or powder bag or any other receptacle for containing and transporting the Product. Buyer confirms and represents that the means of transport it nominates and the crew thereof are qualified in all respects to transport the Product safely to the destination and satisfy the requirements that, taking also into account the nature of the Product, are imposed or may be reasonably expected by the competent government agencies or, in addition, by Seller. Without prejudice to Buyer's responsibility in this respect, Seller shall be entitled to reject a nomination or the loading of a nominated means of transport if in its sole judgement, those requirements have not been fulfilled, even if that nomination had previously been accepted by Seller. Seller shall not be liable for any damage resulting from delivery of Product into an unsuitable room or equipment or from unsuitable means of transport nominated by Buyer and Buyer shall indemnify Seller against any third party claims with respect to such damage.

- 3.7. Buyer confirms and represents that the means of transport nominated by it or by Seller can be loaded or discharged respectively within the agreed or – failing such arrangement – usual loading or discharge time for modern means of transport and loading/discharge installations and shall make good the damage suffered by Seller as a result of a circumstance attributable to or for the risk of Buyer that prevents loading or discharge from being effected within that time.

#### **4. Transfer of Title.**

- 4.1. Seller will retain title to all Products delivered and to be delivered to Buyer until full payment of all purchase amounts has been received, as well as any amounts owed by Buyer pertaining to work performed by Seller in connection with such Sales Agreements and any claims pursuant to any failure in the performance of such Sales Agreements on the part of Buyer. If a bill of lading or comparable cargo document is taken out, Buyer shall be deemed to hold same for Seller until payment has been made as referred to above. If Buyer fails in the performance of any obligation vis-à-vis Seller, or in the event that Seller has good reason to fear that Buyer will fail in the performance of its obligations, Seller shall have the right to repossess the Products, without any prior notice being required. Buyer will cooperate accordingly. Buyer will bear the costs of recovery, without prejudice to Seller's right to further damages. Buyer shall at Seller's first request issue a statement in writing representing that Buyer holds for Seller the Product for which no payment as referred to above has been received.
- 4.2. Buyer will be obliged to store the Products delivered under retention of title with due care, ensuring that they are recognizable as the property of Seller. In addition, it will be obliged to insure such Products against, inter alia, fire and water damage and theft. Buyer will pledge to Seller any claims it has pursuant to such insurance policies upon Seller's first request, as additional security with respect to Seller's claims against Buyer.
- 4.3. Notwithstanding Section 4.1, Buyer shall be entitled to use the Product in the normal course of the business before the purchase price has been paid in full already.
- 4.4. The risk of loss of or damage to the Product shall be transferred to Buyer on delivery in accordance with the agreed delivery term of Section 3.1.

#### **5. Price.**

- 5.1. The purchase price is based on the exchange rate, duties, taxes, freight storage and insurance charges applicable at the time of the formation of the Sales Agreement. In case of any change in the applicable rates, duties, taxes or charges (including but not limited to any tax or other levies on raw materials) after the formation of the Sales Agreement, but prior to the agreed date of delivery, Seller shall have the right to adjust the price accordingly.
- 5.2. Unless otherwise agreed, all prices shall be exclusive of taxes and other levies. Payment of taxes and other levies due shall be effected simultaneously with the payment of the purchase price.
- 5.3. If the supply qualifies as an intra-community transaction as defined in Article 138 of Directive 2006/112, Buyer will notify Seller, in writing and before the supply takes place which VAT number he will use for each transaction and, in case transport is not arranged by or on behalf of Seller, that the Products or other goods will be transported by him or on his behalf to another EC Member State. If, in the above described situation Seller has sufficient confidence that it will receive the evidence requested in time, and, therefore, invoices Buyer with 0% VAT, Buyer shall provide Seller as soon as possible with documents proving that the Products or other goods have been transported to another EC Member State. Buyer is liable for any VAT and fines due by Seller, if Seller does not receive the documents mentioned in time. If the VAT number cannot be verified with fiscal authorities in due time, or if fiscal authorities cannot validate the number at verification, the supply will be deemed to be a national supply and VAT will be levied accordingly. In case Products or other goods are transported by or on behalf of Seller and fiscal authorities do not accept the proof that the Products or other goods have been transported to another EC Member State, Buyer will do his utmost to provide Seller with additional information and to assist Seller in having the proof accepted.

## **6. Payment.**

- 6.1. The purchase price shall be paid to the bank account of Seller in accordance with the payment terms stated on the invoice, without offsetting of debts or deduction of discount, in the currency and manner agreed. If payment is not made by the due time, Buyer shall owe Seller the statutory interest on the unpaid amount over the period that payment is overdue without any summons or notice of default being required, without prejudice to Seller's right to claim fulfilment and/or full damages and/or dissolution of the Sales Agreement and without prejudice to the provisions of Article 6.2. All costs of payment provision of security therefor or recovery thereof shall be for Buyer's account.
- 6.2. In the event of untimely payment, Seller will be entitled to compensation of all extra-judicial costs, including but not limited to costs involved in sending reminders, one or more notices of default or demand notices, which extra-judicial costs will amount to at least fifteen percent (15%) of the total amount payable, subject to a minimum of EUR 500.
- 6.3. If, in Seller's judgement, there are grounds for fearing that Buyer will not fulfil its obligations vis-à-vis Seller, Seller shall be entitled – irrespective of what has been agreed about payments and the provision of a security – to demand payment in advance or (additional) security and to suspend delivery until payment or adequate security has been received. If Buyer fails to fulfil all or some of its obligations or fails to do so on time or omits to provide adequate security for the same, Seller shall be entitled to terminate the Sales Agreement without judicial intervention, and without any warning or summons being required, by written notice with immediate effect or with effect from a date stated therein, without prejudice to Seller's right to claim fulfilment and/or damages.
- 6.4. In the event that Seller is successful in legal proceedings against Buyer, Buyer will be obliged to compensate all costs incurred by Seller in connection with such proceedings, even to the extent that such costs exceed the cost award made by the court. Seller may invoke this clause irrespective of whether Buyer has appealed against the relevant judgment at the court of appeal or the Supreme Court.

## **7. Warranty, Complaints and Inspection.**

- 7.1. Seller warrants, subject to the terms and conditions of these General Conditions of Sale, that the Products will comply with the contractual specifications, within the customary tolerances accepted in the industrial field of Seller. Buyer will not be entitled to any claim if the defect results from any normal wear and tear, incorrect operation, installation, storage, maintenance or from transport, misuse or improper handling by Buyer or any other event that must be attributed to the Buyer.
- 7.2. The Products delivered must be checked by or for Buyer upon delivery with respect to numbers and visible defects (e.g. through analysis) and any shortages or visible defects must be reported to Seller immediately after delivery. Buyer must report defects not visible upon delivery within 48 hours of their discovery, though in any event within 48 hours after the time that Buyer should reasonably have discovered them. Buyer will not be entitled to any claim if the defect results from any incorrect operation, installation, storage, maintenance or from transport or any other event that must be attributed to Buyer.
- 7.3. Buyer shall perform the inspection or have the inspection performed with due care, upon receipt of the Products. Buyer will bear the risk for inspecting the Products by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it – or a third party engaged by it – did not inspect the entire shipment.
- 7.4. In the event of a complaint on good grounds, Seller will only be obliged – to be decided at the Seller's discretion – to repair the defect, to replace the relevant Product or to credit or refund the amount charged in connection with the defective Product in whole or in part, according to its own reasonable judgment and to the exclusion of any other rights or remedies of Buyer by law.
- 7.5. Any and all claims for payment of an amount of money and/or repair of the relevant Product and/or replacement of the Product and/or supply of any missing part, on whatever basis, as well as any right to dissolve the Sales Agreement will lapse at the earliest of the following times: a) upon late reporting pursuant to Clause 7.1 or b) 12 months after the delivery date.
- 7.6. For completeness' sake, this warranty and the warranty obligations set forth therein constitute Buyer's sole remedy and Seller's sole obligation with respect to any defective and/or non-conforming Product or breach of warranty and is subject to and without prejudice to Article 7.2 and Article 8.1 of these Conditions.

## **8. Liability.**

- 8.1. Seller's total aggregate liability, on any basis whatsoever, with respect to any offer, order, offer, confirmation, Sales Agreement, these General Conditions of Sale or the Products will be restricted to the provisions laid down in Article 7.4.

- 8.2. Except as provided in Clause 7.1, no warranty is given and no representation is made by Seller, whether express or implied, as to the usefulness, sufficiency, merchantability or fitness for any purpose whatsoever of the Product supplied, unless explicitly given or made in writing. The correctness of information provided by Seller regarding quality, composition or possible applications of the Products is warranted only if such warranty is explicitly stated in the Sales Agreement.
- 8.3. In no event shall Seller's liability exceed the net sale price of the relevant delivery. In no event shall Seller's liability include indirect or consequential damages (including but not limited to lost profits, loss of data, missed savings or forfeited penalties). Seller's liability on account of improper fulfilment shall lapse if the Product is utilised or processed. Seller accepts no liability whatsoever for any incorrectness in any information and advice regarding possible uses of the Product. Buyer shall indemnify and hold Seller harmless from claims resulting from the use of the Product in manufacturing processes, or in combination with other substances, or otherwise. Buyer represents to Seller that it has used its own independent skill and expertise in connection with the selection and use of the Product and that it possesses skill and expertise in handling, storage, transportation, treatment, use and disposal of the Product. Limitations or exclusions of liability are also irrevocably imposed and accepted for those who are engaged by Seller in the execution of the Agreement.
- 8.4. Buyer shall compensate and indemnify Seller against any claims by third parties and all resulting costs in connection with any Products or goods sold to Buyer by Seller.
- 8.5. Nothing in these General Conditions of Sale shall exclude or limit Seller's liability in the event that the damage is the consequence of gross negligence or willful misconduct by Seller's executive management.

## **9. Force Majeure.**

- 9.1. Neither of the parties shall be deemed to be in default under the Sales Agreement and no liability shall result from non-fulfilment, untimely fulfilment or improper fulfilment of its obligations if, in so far as and as long as fulfilment has been partly or in full, temporarily or continuously delayed or prevented by force majeure. In these conditions force majeure will mean a non-attributable failure, which failure is not attributable under law, legal act or common opinion. This force majeure shall include, but not limited to:
  - Acts of God, war, riot, fire, explosion, or mechanical breakdown;
  - Regulations of a government agency, of a port, local or other authority or anybody or person indicating that it/he is such an agency or authority or is acting on its behalf;
  - Hindrances, restrictions or obstructions in respect of the extraction, production, supply (including extension of supply lines) and/or importation of raw and auxiliary materials for the Product and/or in respect of the manufacturing of the Product and/or the transportation thereof to the place of delivery (including non-performance by supply companies);
  - Circumstances which have not been anticipated by Seller or cannot reasonably be expected to have been anticipated by Seller and which are of such interest that Seller, would such circumstances be known to him, would not or not on the same conditions have entered into the Agreement;
  - Strikes, threat of strike action or other labour conflicts.
- 9.2. The obligation to make prompt payment of a sum of money or the provision of security therefor can in no case be averted by a claim of force majeure.
- 9.3. The party whose obligations cannot be completely fulfilled as a result of force majeure shall inform the other party as quickly as possible about the occurrence of the facts and circumstances creating that force majeure, indicating to what extent it can continue the deliveries or offtakes, as the case may be.
- 9.4. If due to an event of Force Majeure the Product available is insufficient for supplying all off-takers, Seller shall be entitled to distribute the Product available amongst its regular off-takers in a manner fairly determined by Seller. Buyer shall be free to purchase quantities not delivered by Seller from other suppliers.
- 9.5. Quantities that are – in deviation of the Sales Agreement – not delivered by Seller or are not taken by Buyer as result of force majeure shall be deducted from the quantities to be contractually supplied or taken, as the case may be.

## **10. Postponement or omission.**

- 10.1. Postponement or omission in claiming strict fulfilment of contractual obligations on one or more occasions or in exercising any right or privilege shall in no case be regarded as renunciation for the future of the right of fulfilment or of such rights or privileges, unless that renunciation for the future has been expressly made in writing.

**11. Language.**

11.1. In case of conflict between these general conditions of sale in the English language and any translations thereof in other languages, the English edition shall prevail.

**12. Governing law and competent court.**

12.1. The Sales Agreement shall be governed by the laws of the Portugal. Any disputes in connection with the Sales Agreement shall be exclusively submitted to the competent court at PREVINIL's head office, Portugal.

12.2. Seller guarantees to process personal data in accordance with the applicable legislation on protection of privacy and data (General Data Protection Regulation).

This text can be consulted at: <http://docs.previnil.pt/load/gcs>