

FABBRICA COOPERATIVA PERFOSFATI CEREAL

Via Farfusola 6, 37050 – Bonavicina di San Pietro di Morubio (VR) – ITALY

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GENERAL TERMS AND CONDITIONS OF SALE OF FABBRICA COOPERATIVA PERFOSFATI CEREAL

1. **Applicable Terms and Conditions**
- 1.1 These General Terms and Conditions of Sale ("General Sale Conditions") and the relevant Annexes attached herein, shall form integral part of all orders, orders confirmation, sales and deliveries of Products between Fabbrica Cooperativa Perfosfati Cerea ("Seller") and the buyer ("Buyer") and they shall prevail over any terms and conditions of the Buyer, unless otherwise expressly agreed in writing by the Seller.
- 1.2 Failure of the Seller to expressly reject the terms and conditions set by the Buyer shall in no event be construed as an acceptance of any terms and conditions of the Buyer. Buyer's terms and conditions shall only become integral part of the sale of the Products upon condition that the Seller has expressly agreed in writing to their applicability.
- 1.3 Neither the Seller's commencement of performance nor the Seller's delivery shall be deemed or construed as acceptance of any of the Buyer's terms and conditions.
- 1.4 Our General Sale Conditions shall apply to any and all future orders placed by the Buyer.
2. **Products**
- 2.1 The products covered by these General Sale Conditions are those sold by the Seller at the time the order is placed, ("Products"). Catalogues and promotional material shall not constitute an offer and may be modified by the Seller at any time without notice. The information and the technical characteristics of the Products contained in the catalogues, price lists, the promotional material and in the Seller's internet website are indicative and do not bind the Seller.
3. **Orders**
- 3.1 Orders shall be made in writing and shall be deemed accepted and binding only upon written confirmation by the Seller.
4. **Prices**
- 4.1 Unless otherwise indicated in the order confirmation, prices of the Products are those indicated in Seller's prevailing price list as of the date of receipt of the order. Such prices are expressed in Euros, V.A.T. or other sales tax or duty excluded.
- 4.2 In case of substantial variations in the costs (for example and without limitation: costs of materials and workmanship), or in case of any other fact or circumstance which may affect the price of Products, prices may be varied by Seller.
- 4.3 Unless otherwise agreed upon in writing, prices are for delivery **Ex Works - Incoterms® 2010 warehouse FCP CEREAL**. Products are supplied with standard packaging: 500 kg big bag or 25kg bag in 1200kg euro pallet, special packaging price is to be quoted separately by the Seller.
5. **Products Labels**
- 5.1 Products' Labels are drafted by the Seller according to Buyer instructions, who undertakes full responsibility of label compliance with all legislation rules, regulations and statutory provision in force in the country of sale destination and further undertakes to indemnify and hold the Seller harmless from any liability, damages or costs in connection with any failure to carry out this obligation.
- 5.2 The Buyer shall act as an independent contractor, purchasing the Products from the Seller and reselling them in its own name and behalf.
- 5.3 The sale of the Products from the Seller to the Buyer do not rise any exclusive territorial right for the Buyer and it does not grant the latter any right or title to be considered as distributor or agent of the Seller.
6. **Payment**
- 6.1 Terms and methods of payment are those indicated in the Seller's order confirmation, unless subsequently modified by an express written declaration of the Seller.
- 6.2 Irrespective of what set out in the order confirmation and irrespective of the means of payment, the place of performance of the payments shall be at Seller's offices in Bonavicina di San Pietro di Morubio (Verona)-Italy. All costs for issuance of the bills of exchange, bank cheque or other negotiable instruments including all relevant banking expenses, are for the Buyer's account.
- 6.3 Whenever a prepayment or down-payment is agreed, same shall be paid by the Buyer at the time of the order confirmation by the Seller. The prepayment or down-payment shall not bear interest.
- 6.4 In case of payment by installments, should the Buyer fail to honor even one installment or diminish the security granted to the Seller, the latter shall have the right - without prejudice to what set forth under paragraph 6.6 below - to claim for immediate payment of the entire outstanding amount with forfeiture of any term benefit.
- 6.5 In case of payment by direct remittance, it shall be made by means of bank transfer via SWIFT - value date in favor of the beneficiary equal to the day on which payment is due - to the bank account indicated by the Seller.
- 6.6 In case of non-payment or delayed payment, in whole or in part, the Buyer shall be charged with interest at the rate provided for under Italian Legislative Decree no. 231/2002. In such an event the Seller shall be further entitled to forthwith:
 - a) suspend the production or delivery of any Products and orders in progress, even for different supply;
 - b) terminate the relevant sale contract, with immediate effect under Art. 1456 of the Italian civil code;
 - c) claim for refund of all damages suffered as a consequence of the non-payment or delayed payment;
- d) retain the down-payment and any other amounts so far paid by the Buyer, without prejudice to Seller's right to proceed for the recovery of any additional damages it may have suffered as a result thereof.
- 6.7 The Buyer agrees that the Seller is entitled to deduct, as a set off, from any payments that should be made to the Buyer by the Seller all and any amounts due to the Seller by the Buyer, regardless of the reason. Except if previously agreed in writing by the Seller, the Buyer may not deduct as a set off any amount owed by the Seller to the Buyer.
7. **Delivery**
- 7.1 Time of delivery shall be calculated in business days (in Italy). The delivery dates are not binding for the Seller. In case prepayments or down-payments are agreed, the relevant delivery period shall start from receipt by the Seller of the prepayment or of the down-payment.
- 7.2 Delivery may be suspended by the Seller:
 - (i) in case of failure by the Buyer to effect the prepayment or the down-payment or in case of failure of payment by the Buyer of any amount due to the Seller under any existing contract;
 - (ii) until all technical and administrative data and information required to properly fulfill the order are received by the Seller.
- 7.3 Should the Seller be prevented from meeting any delivery date due to lack or delayed deliveries on the part of its suppliers, interruption or suspension of transport or energy, strikes or union agitations or by reason of any other event beyond its reasonable control, time of delivery shall cease to run from the day of communication of the impediment to the Buyer. In case the impediment of material deliveries lasts for more than 60 (sixty) days, each party shall be entitled to terminate the contract by giving written notice to the other, without any compensation or indemnity being due by the Seller which shall have in any case the right to have the Products already manufactured for the Buyer at the time of the communication of the impediment, duly paid by the Buyer and without prejudice of all of any of the Seller's rights.
- 7.4 In case of cancellation by the Buyer of a firm and/or confirmed order as well as in case of non-collection of the Products by the Buyer, the latter shall pay to the Seller a penalty fee equal to 20% (twenty per cent) of the value of the cancelled order and/or non-collected Products, without prejudice to any other Seller's right including the right to claim compensation of any further damages suffered in connection therewith.
8. **Intellectual Property Rights-Confidentiality**
- 8.1 The Buyer shall not register or assign the Seller's trademark or any other Seller's distinctive marks names or expressions ("Trademark") nor use the Trademark, to register domain names and/or to build internet sites or web pages, even for the purpose of the promotion and resale of the Products. The Buyer cannot insert or display the Trademark and/or the Products on its own web sites or home pages, without express written authorization of the Seller. In any case the Buyer undertakes to promptly assign to the Seller any registration or right on the Trademark obtained in infringement of this paragraph without any consideration or indemnification being due to the Buyer.
- 8.2 Any right to use the Trademarks granted by the Seller to the Buyer is not to be construed as a license in favor of the Buyer; the latter is not entitled to use the Trademark outside or beyond the scope of reselling the Products. Any use of the Trademark by the Buyer shall be strictly in compliance with the commercial standards and policies approved or followed by the Seller. The Buyer undertakes to maintain, preserve, and not to impair the goodwill and the commercial reputation of the Trademark.
- 8.3 The Buyer shall not (except in the proper performance of his duties hereunder) during or after the termination of the commercial relationship with the Seller disclose to any person whatsoever any information relating to the Seller's business or any of its trade secrets or make use of the same in any manner which may be prejudicial to the Seller, except where there is any legal requirement to disclose such information.
- 8.4 Any documents and information provided by the Seller to the Buyer of any kind such as samples, drawings, descriptions, models, specifications, formulation, composition and such like remain the property of the Seller. They may not be used for other purposes or made available to third parties or reproduced. They shall be returned to the Seller along with any potential copies or reproductions at the Seller's simple request.
9. **Warranty**
- 9.1 The Seller warrants that the Products comply with the technical characteristics as described in the technical sheet attached to the order confirmation issued by the Seller. The Products are warranted for 6 (six) months from delivery.
- 9.2 The exclusive remedy under this warranty shall be, at the Seller's option, the reduction of the price of the sale with regard to the defective Products/the reimbursement of the amount paid for the defective Products or the replacement of the defective Products Exw - Incoterms® 2010 warehouse FCP CEREAL. Any other intervention and remedy as well as any responsibility for direct, indirect, incidental or consequential damages or any other losses or costs is expressly excluded and waived by the Buyer.
No further express or implied warranty, whether by operation of law or conventional, including but not limited to any warranty of merchantability and/or fitness for specific purposes, is granted by the Seller to the Buyer.

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- 9.3 The warranty does not cover normal wear and tear; nor does it cover the Products that fails or is damaged as a result of: (a) improper or insufficient storage, unauthorized use, adjustment, alteration, or modification; (b) defaults on the parts of suppliers or sub-contractors, force majeure in general and any other causes or circumstances whatsoever beyond the Seller's reasonable control; (c) abuse, or improper use; (d) damage due to environmental conditions; (e) compliance with the Buyer's instructions.
- 9.4 The Buyer shall, examine the Products immediately upon delivery and shall notify in writing the Supplier of any incomplete or non-conforming consignments as well as of any apparent defects discovered by it without delay and in any case no later than 8 (eight) calendar days from the delivery of the Products as set out under Art. 1495 of the Italian Civil Code, clearly describing the nature of the defect, clearly indicating the defective Product identification number and item code number and including the document proving: i) the relevant delivery date of the Product, ii) pictures of the defects.
Likewise, hidden defects shall be notified in writing, without delay, and in any case no later than 30 (thirty) calendar days from discovery by the Buyer or by the Buyer's customers, clearly indicating and including the aforementioned information and documents, and including the chemical analysis of the alleged non conforming Products.
In case of late and/or incomplete notification of defects any of the Buyer's rights shall expire.
- 9.5 Where the Buyer has given due notice of non-conformity to the Seller, in compliance with the provisions of this General Sale Conditions, the parties shall first attempt to settle the matter through consultation and negotiation in good faith in a spirit of mutual cooperation. In the absence of agreement within 30 (thirty) calendar days from the date of receipt of the non-conformity notice by the Seller, the remaining provisions of this section 9 shall apply.
The Buyer shall hold the defective Products at Seller's disposal and/or return them to the Seller, for the latter evaluation and inspection. No returns are allowed without the Seller's prior written authorization.
- 9.6 In the event a dispute arises between the Parties relating to the non-conformity of the Products in accordance with the relevant provisions of this General Sales Conditions, the dispute shall be referred to an independent laboratory which is not related to either the Sellers' or the Buyer's business ("Independent Laboratory"), selected according to the provisions below.
- 9.7 Should the parties fail to find an agreement on the name of the Independent Laboratory to be appointed within 30 (thirty) days after being requested by either party to agree on the appointment, the provisions of section 13 (Jurisdiction) below shall apply.
- 9.8 In case of appointment as set forth above, the Independent Laboratory shall proceed with the sampling of the alleged non conforming Products at the presence of the parties and/or their authorized representatives. The parties are entitled to take part to the technical analysis made by the Independent Laboratory.
- 9.9 The Independent Laboratory shall issue its assessment within 90 (ninety) business days (in Italy) after its appointment and shall act on the following basis:
(a) the Independent Laboratory shall act as an expert and not as an arbitrator;
(b) the parties agree that any decision of the Independent Laboratory may be based on his technical and equitable evaluation, and not on his own discretion, as set out under article 1349 of the Italian Civil Code;
(c) the language of the procedure, including all documents, reports and briefs, shall be English;
(d) the Independent Laboratory final determination shall be given in writing and shall state the reasons therefore.
- 9.10 In fulfilling its assignment, the Independent Laboratory must adhere to the provisions of this General Sale Condition. The Sellers and the Buyer shall each provide the Independent Laboratory promptly with all information which it reasonably requires.
- 9.11 The determination of the Independent Laboratory shall, in the absence of manifest error or collusion, be final and binding on the parties.
- 9.12 The costs of the Independent Laboratory determination, including fees and expenses of the Independent Laboratory, shall be borne equally as between the Seller on the one hand and the Buyer on the other hand.
- 9.13 The commencement of the Independent Laboratory procedure shall not prevent the Seller to seek recovery of outstanding amounts due by the Buyer to the Seller according to the provision of section 13 (Jurisdiction) below.
- 10. Retention of Title**
- 10.1 All Products delivered by the Seller to the Buyer are subject to the retention of title clause hereof, although not mentioned in the relevant order confirmation or in other documents of the Seller.
- 10.2 The Products shall remain the property of the Seller until the invoiced price and any other pertinent obligations of the Buyer have been fully performed by the latter. In case of failure or delay in payment, the Seller shall be entitled to terminate the relevant sale contract forthwith with immediate effect under Art. 1456 of the Italian civil code and claim back the Products. In such an event the Buyer shall be under the obligation to immediately return the Products to the Seller.
- 10.3 As long as the property has not passed to it, the Buyer shall be bound to treat the Products with the utmost care, and to notify the Seller in writing and without delay of any levy of execution or interference by a third party and immediately inform in writing the third party of the existence of the retention of title in favor of the Seller.
- 10.4 The Buyer undertakes to perform any and all fulfillments possibly set forth in its country to allow the Seller to enforce such retention of title even towards the Buyer's creditors. Risks for Products' loss or damages occurred after the Seller has delivered the Products shall be the Buyer's responsibility.
- 11. Termination**
- 11.1 Without prejudice to any express provision on termination contained in these General Sale Conditions, the Seller shall have the right to terminate at any time the sale contract in case of breach or failure by the Buyer to perform or observe any material terms and conditions thereof, provided said breach or failure is not cured within 15 (fifteen) days of receipt of the relevant notice of complaint specifying the breach and requiring the breach to be remedied.
- 11.2 The Seller shall also have the right to terminate the sale contract forthwith with immediate effect under Art. 1456 of the Italian civil code, should any of the following events occur: i) voluntary winding up or discontinuance of the Buyer activity, ii) any kind of insolvency and of insolvency procedure concerning the Buyer including any kind of arrangements with its creditors.
- 11.3 Termination will not affect any of the Seller's rights accrued at the time of termination or relieve the Buyer of any obligations relative to confidentiality, and of any obligation to indemnify the Seller from any direct, indirect, incidental or consequential damage which arise out from or are in any way connected with any breach of the sale contract.
- 12. Governing Law**
- 12.1 These General Sale Conditions and all sale contracts entered into between the Seller and the Buyer shall be governed by the laws of Italy, with exclusion to its conflict of laws provisions. The application of the April 11, 1980 Vienna Convention on International Sale of Goods being expressly excluded (except for what set forth in Article 11 thereof with respect to the form of the contract. Therefore the requirements under Art. 1341 of the Italian civil code are excluded).
- 13. Jurisdiction**
- 13.1 Any dispute that may arise out of or relate to all sale contracts entered into between the Seller and the Buyer shall be submitted to the exclusive jurisdiction of the Courts of Verona, Italy. As a partial derogation to what set forth above, the Seller shall always be entitled to bring any action or proceedings against Buyer in any other court of competent jurisdiction.
- 14. Final Provisions**
- 14.1 Any sale contract may be amended only in writing.
- 14.2 The place of delivery of the Products or performance of the Seller's obligations are at the Seller's premises in Verona-Italy.
- 14.3 Failure by the Seller to enforce at any time any of the provisions of these General Sale Conditions or of the sales contracts ruled thereby shall not be construed as a general waiver of such provision or of the right of the Seller to thereafter enforce each and every provision contained therein.
- 14.4 In the event any of the provisions of these General Sale Conditions or any of the clauses of the sales contracts governed thereby will be declared null and void or ineffective or contrary to law, the remaining provisions thereof shall continue in full force and effect and the invalid or ineffective portion shall be severed there from and be replaced, when possible, by a provision reflecting the intent of the parties.
- 14.5 The Seller reserves the right to change, integrate or vary the General Sale Conditions, by including such variations at the Seller's website <http://www.fcpcerea.it>, without notice or liability.
- 15. Language**
- 15.1 The language of this General Sale Conditions and the transactions envisaged by it is English and all notices, demands, requests, statements, certificates or other documents or communications must be in English unless otherwise agreed. However, where a term in Italian is given in italics or in brackets and in brackets after an English term and there is any inconsistency the meaning in the Italian language shall prevail.