

GENERAL TERMS AND CONDITIONS OF SALE

1. GENERAL

- 1.1 These General Terms and Conditions of Sale (“Conditions”) govern the offering, sale and delivery of all goods and/or services (hereinafter jointly referred to as the “Product(s)”) from or on behalf of Apeel Technology, Inc. or an Affiliate of Apeel Technology, Inc. (dba Apeel Sciences) offering and/or selling the Products (such entity referred to as “Apeel” or “Apeel Selling Entity”) to customer (“Customer”) and apply to all transactions between Apeel and Customer. Affiliate of Apeel Technology, Inc. means any corporation or other entity which is directly or indirectly controlled by Apeel Technology, Inc. An entity shall be deemed to “control” another entity if it has the power to direct or cause the direction of the management or policies of the other entity whether through ownership of voting securities or otherwise.
- 1.2 By contracting on the basis of the Conditions, Customer agrees to the applicability thereof in respect of all future dealings, even if this is not explicitly stated.
- 1.3 Apeel explicitly rejects the applicability of any general terms and conditions of Customer. Furthermore, the Conditions supersede any and all terms of prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure by Apeel to object to the terms and conditions set by Customer shall in no event be construed as an acceptance of any of the terms and conditions of Customer. Neither Apeel’s commencement of performance nor Apeel’s delivery shall be deemed as acceptance of any of Customer’s terms and conditions. If the Conditions differ from any of the terms and conditions of Customer, the Conditions and any subsequent communication or conduct by or on behalf of Apeel, including, without limitation, confirmation of an order and delivery of Products, constitute a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by Apeel, as well as acceptance by Customer of any delivery of Products from Apeel shall constitute an acceptance by Customer of the Conditions.
- 1.4 The current version of the Conditions is available at Apeel.com/legal. Apeel reserves the right to amend the Conditions at any time by, and any such changes will be, posted on the aforementioned Internet sites. The amended Conditions will take effect on the effective date set forth in such amended Conditions. The amended Conditions shall apply to all transactions concluded between Customer and Apeel after the date of such notification.
- 1.5 Any electronic communication between Apeel and Customer shall be effective as originals and shall be considered to be a “writing” between the parties. The electronic communication system used by Apeel will serve as sole proof for the content and the time of delivery and receipt of such electronic communications.

2. QUOTATIONS, ORDERS AND CONFIRMATION

- 2.1 Unless stated otherwise, quotations made by Apeel in whatever form are not binding on Apeel and merely constitute an invitation to Customer to place an order. All quotations issued by Apeel are revocable and subject to change without notice. Orders are not binding until accepted by Apeel in writing (a “Confirmed Order”). Apeel shall be entitled to refuse an order without indicating the reasons.
- 2.2 Price quotations based on estimated or projected quantities are subject to increase if actual quantities purchased during the specified period are less than the estimated or projected quantities.
- 2.3 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.
- 2.4 Except as provided for in Article 7.3, any samples supplied to Customer are solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose. Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Products.

3. PRICES

- 3.1 Prices and currencies of Apeel’s Products are as set out in the Confirmed Order. Unless otherwise agreed in writing, Apeel’s prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery thereof (“Taxes”). The amount of any Taxes levied in connection with the sale of Products to Customer shall be for Customer’s account and shall either be added to each invoice or separately invoiced by Apeel to Customer.
- 3.2 Unless the prices have been indicated as firm in the Confirmed Order, Apeel is entitled to increase the price of Products upon notice to Customer.

4. PAYMENT AND CUSTOMER’S CREDIT

- 4.1 Unless stated otherwise in the Confirmed Order, payment shall be made in United States dollars (USD) on the basis of net cash, to be received by Apeel within 30 (thirty) days following the date of Apeel’s invoice. All payments shall be made without any deduction on account of any Taxes and free of set-off or other counterclaims.

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- 4.2 With regard to payment for the Products, time is of the essence. Apeel may, without prejudice to any other rights of Apeel, charge interest on any overdue payment at the greater of 12% or the legally permissible rate per annum from the due date computed on a daily basis until all outstanding amounts are paid in full. All costs and expenses incurred by Apeel with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account.
- 4.3 Every payment by Customer shall first serve to pay the judicial and extra-judicial costs and the accrued interest and shall afterwards be deducted from the oldest outstanding claim regardless of any advice to the contrary from Customer.
- 4.4 Any complaint with respect to the invoice must be notified to Apeel in writing within 5 (five) days after the date of invoice. Thereafter, Customer shall be deemed to have approved the invoice.

5. DELIVERY AND ACCEPTANCE

- 5.1 Unless stated otherwise in the Confirmed Order, all deliveries of Products shall be CIP (Carriage and Insurance Paid To) place of delivery. The term CIP shall have the meaning as defined in the latest version of INCOTERMS published by the International Chamber of Commerce in Paris, France at the time of the Confirmed Order.
- 5.2 Unless stated otherwise in the Confirmed Order, any times or dates for delivery by Apeel are estimates and shall not be of the essence. Apeel is entitled to deliver the Products as stated in the Confirmed Order in parts and to invoice separately. In no event shall Apeel be liable for any damages and/or costs due to delay in delivery. Delay in delivery of any Products shall not relieve Customer of its obligation to accept delivery thereof, unless Customer cannot reasonably be expected to accept such late delivery. Customer shall be obliged to accept the Products and pay the rate specified in the Confirmed Order for the quantity of Products delivered by Apeel.

6. CANCELLATION

Customer's wrongful non-acceptance or rejection of Products or cancellation of the Confirmed Order shall entitle Apeel to recover from Customer, in addition to any other damages caused by such action:

- (i) in the case of Products which reasonably cannot be resold by Apeel to a third party, the price of such Products as quoted in the Confirmed Order; or
- (ii) in the case of Products which can be resold by Apeel, damages equal to 50% (fifty percent) of the price for the Products as quoted in the Confirmed Order as liquidated damages.

7. EXAMINATION AND CONFORMITY TO SPECIFICATIONS

- 7.1 On delivery and prior to the handling, use, commingling alteration, incorporation, processing, transportation, storage, importation and/or resale of the Products, Customer shall examine the Products and satisfy itself that the Products delivered meet the agreed specifications for the Products as stated in the Confirmed Order or, in the absence of agreed specifications, to the most recent specifications used by Apeel at the time of delivery of the Products (the "Specifications").
- 7.2 Complaints about the Products shall be made in writing and must reach Apeel not later than 7 (seven) days: (a) from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery; and (b), from the date on which any other claim (e.g. hidden defects) was or ought to have been apparent, but in no event later than (i) 6 (six) months from the date of delivery of the Products or (ii) the expiry of the Products' shelf-life whichever is the earlier. Any use of the Products shall be deemed to be an unconditional acceptance of the Products as of the date of delivery and a waiver of all claims in respect of the Products.
- 7.3 A determination of whether or not delivered Products conform to the Specifications shall be done solely by Apeel analyzing the samples or records retained by Apeel and taken from the batches in which the Products were produced in accordance with the methods of analysis used by Apeel.
- 7.4 Customer shall not return the Product. Defects in parts of the Products do not entitle Customer to reject the entire delivery of the Products. Complaints, if any, do not affect Customer's obligation to pay as defined in Article 4. Upon receipt of a complaint, Apeel is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

8. TRANSFER AND RISK OF PROPERTY

- 8.1 Risk of the Products shall pass to Customer in accordance with the applicable Incoterm (see Article 5.1).
- 8.2 Title to the Products shall pass to Customer and full legal and beneficial ownership of the Products shall transfer to Customer when the Products arrive at the place of delivery.
- 8.3 Products for which delivery is suspended pending payment by Customer, as well as Products of which delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by Apeel at the risk and expense of Customer.
- 8.4 In the event of termination on the basis of Article 16, Apeel shall, without prejudice to any other rights of Apeel, be entitled to require immediate return of the Products, or to repossess the Products, for which it may invoke a retention of title.

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- 8.5 Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall:
- (i) keep the Products separate and in a clearly identifiable manner;
 - (ii) notify Apeel immediately of any claims by third parties which may affect the Products; and
 - (iii) adequately insure the Products.

9. LIMITED WARRANTY

- 9.1 Apeel solely warrants that on the date of delivery the Products shall conform to the Specifications. If and to the extent Products are in breach with such warranty, as determined in accordance with Article 7, Apeel may at its discretion, within a reasonable time, either repair or replace the Products at no charge to Customer or issue a credit for any such Products in the amount of the original invoice price. There are no refunds. Accordingly, Apeel's obligation shall be limited solely to repair or replacement of the Products or for credit of the Products.
- 9.2 Apeel's obligation to repair, replace, or credit shall be contingent upon receipt by Apeel of timely notice of any alleged non-conformance of Products, in accordance with Article 7.
- 9.3 THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR OTHER TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PURPOSE, OR ABSENCE OF INFRINGEMENT OF ANY CLAIM IN ANY INTELLECTUAL PROPERTY RIGHT COVERING THE PRODUCTS.

10. LIMITED LIABILITY

APEEL'S LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL APEEL BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

11. FORCE MAJEURE

- 11.1 Neither party shall be liable in any way for any damage, loss, cost or expense arising out of or in connection with any delay, restriction, interference or failure in performing any obligation towards the other party caused by any circumstance beyond its reasonable control, including, without limitation, acts of God, laws and regulations, administrative measures, orders or decrees of any court, earthquake, flood, fire, explosion, war, terrorism, riot, sabotage, accident, epidemic, pandemic, strike, lockout, slowdown, labor disturbances, difficulty in obtaining necessary labor or raw materials, lack of or failure of transportation, breakdown of plant or essential machinery, emergency repair or maintenance, breakdown or shortage of utilities, delay in delivery or defects in goods supplied by suppliers or subcontractors ("Force Majeure").
- 11.2 Upon the occurrence of any event of Force Majeure, the party suffering thereby shall promptly inform the other party by written notice thereof specifying the cause of the event and how it will affect its performance of its obligations under the Confirmed Order. In the event of any delay, the obligation to deliver shall be suspended for a period equal to the time loss by reason of Force Majeure. However, should a Force Majeure event continue or be expected to continue for a period extending to more than 60 (sixty) days after the agreed delivery date, either Party is entitled to cancel the affected part of the Confirmed Order without any liability to the other Party.

12. MODIFICATIONS AND INFORMATION; INDEMNITY

- 12.1 Apeel reserves the right to change or modify the Specifications and/or manufacture of Products and to substitute materials used in the production and/or manufacture of Products from time to time without notice. Customer acknowledges that data in Apeel's catalogues, product data sheets and other descriptive publications distributed or published on its websites may accordingly be varied from time to time without notice.
- 12.2 Apeel may provide Customer with samples or information regarding the use of Products by Customer. Customer acknowledges that Apeel is in no way responsible for Customer's use of Apeel's Products. Customer must solely rely on its own expertise, know-how and judgment in relation to the Products and Customer's use thereof as well as in Customer's application of any information obtained from Apeel for the purposes intended by Customer. Consultation provided by Apeel shall not give rise to any additional obligations. Details and information provided with regard to the suitability and use of the Products shall not be binding and Apeel does not assume any liability based on such consultations. Customer shall indemnify and hold Apeel harmless from and against any and all damages, losses, costs, expenses, claims, demands and liabilities (including without limitation product liabilities) arising out of or in connection with the Products and Customer's use thereof or application of any information disclosed or provided by or on behalf of Apeel.

13. COMPLIANCE WITH LAWS AND STANDARDS

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- 13.1 Customer acknowledges that the use of the Products may be subject to requirements or limitations under any law, statute ordinance, rule, code or standard, including, but not limited to, all applicable regulations relating to (i) anti-bribery and anti-corruption and (ii) international trade, such as, but not limited to, embargos, import and export control and sanctioned party lists ("Laws and Standards").
- 13.2 Customer expressly warrants that employees, agents and subcontractor of the Customer shall not directly or indirectly (i) accept, promise, offer or provide any improper advantage to or (ii) enter into an agreement (a) with any entity or person - including officials of a government or a government-controlled entity, or (b) relating to a product, which would constitute an offense or infringement of applicable Laws and Standards.
- 13.3 Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such use.

14. INDEPENDENT CONTRACTORS

Apeel and Customer are independent parties, and the relationship created hereby shall not be deemed to be that of principal and agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

15. NON-ASSIGNMENT AND CHANGE OF CONTROL

- 15.1 Neither party may assign any of the rights or obligations under the Confirmed Order without the prior written consent of the other party, except that Apeel may assign such rights and obligations to any Affiliate of Apeel or to a third party acquiring all or a substantial part of its assets or business relating to the Products.
- 15.2 Apeel shall have the right to terminate the Confirmed Order with immediate effect if at any time during the term of the Confirmed Order a person or group of persons, who are unrelated to the persons controlling Customer as of the date of the Confirmed Order, acquires control, through ownership of voting securities or otherwise, over Customer. Customer must notify Apeel of such acquisition within 10 (ten) days thereof. Apeel may exercise its right to terminate the Confirmed Order by giving Customer written notice within 10 (ten) days after the date of receipt of such notice.

16. SUSPENSION AND TERMINATION

- 16.1 If (i) Customer is in default of performance of its obligations towards Apeel and fails to provide adequate assurance of Customer's performance before the date of scheduled delivery; or (ii) if Apeel has reasonable doubts with respect to Customer's performance of its obligations and Customer fails to provide to Apeel adequate assurance of Customer's performance before the date of scheduled delivery and in any case within thirty (30) days of Apeel's demand for such assurance; or (iii) if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (other than for the purpose of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors; or (iv) in case of non-compliance of Customer with Laws and Standards, then Apeel may by notice in writing forthwith, without prejudice to any of its other rights:
- (i) demand return and take repossession of any delivered Products which have not been paid for and all costs relating to the recovery of the Products shall be for the account of Customer; and/or
 - (ii) suspend its performance or terminate the Confirmed Order for pending delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to Apeel.
- 16.2 In any such event of Article 16.1 all outstanding claims of Apeel shall become due and payable immediately with respect to the Products delivered to Customer and not repossessed by Apeel.

17. WAIVER

Failure, delay or omission by Apeel to enforce at any time any provision of the Conditions shall not be construed as a waiver of Apeel's right to act or to enforce any such provision. No waiver by Apeel of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

18. SEVERABILITY AND CONVERSION

In the event that any provision of the Conditions shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever, the validity and enforceability of the remaining provisions between the parties and shall be severed therefrom. The pertaining provisions held to be invalid or unenforceable shall be reformed to meet the legal and economic intent of the original provisions to the maximum extent permitted by law.

19. LIMITATION OF ACTION

Unless otherwise stated hereunder, no action by Customer shall be brought unless Customer first provides written notice to Apeel of any claim alleged to exist against Apeel within 30 (thirty) days after the event complained of first becomes known to Customer and an action is commenced by Customer within 12 (twelve) months after such notice.

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20. GOVERNING LAW AND VENUE

- 20.1 These Conditions shall be construed and interpreted pursuant to the substantive laws of the country (or state) in which the Apeel Selling Entity is incorporated. The United Nations Convention on Contracts of the International Sale of Goods (CISG) shall not apply.
- 20.2 The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated before the competent courts at the seat of incorporation of the Apeel Selling Entity.

21. SURVIVAL OF RIGHTS

The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. The parties shall ensure that their directors, officers, employees, agents and legal representatives comply with these Conditions. Termination of one or more of the parties' rights and obligations, for whatever reason, shall not affect those provisions of the Conditions which are intended to remain in effect after such termination.

22. HEADINGS

The headings contained in the Conditions are included for mere convenience of reference and shall not affect the latter's construction or interpretation

23. INTELLECTUAL PEROPERTY & CONFIDENTIALITY

- 23.1 All intellectual property rights arising out of or in connection with the Products shall be the exclusive property of Apeel.
- 23.2 Apeel has not verified the possible existence of third- party intellectual property rights which might be infringed as a consequence of the sale and/or delivery of the Products and Apeel shall not be held liable for any loss or damage in that respect.
- 23.3 The sale of Products shall not, by implication or otherwise, convey any license under any intellectual property right relating to the compositions and/or applications of the Products, and Customer explicitly assumes all risks of any intellectual property infringement by reason of its importation and/or the Use of the Products, whether singly or in combination with other materials or in any processing operation. Customer agrees not to file any patent applications based on the Products or any modifications or derivatives thereof, including but not limited to any combination of the Products with Customer's products, without Apeel's prior written consent.
- 23.4 Any and all information provided by or on behalf of Apeel shall be treated as confidential and shall only be used by Customer for the purpose of the transactions under these Conditions. Disclosing information is only allowed to any of its employees or a third party on a strict need-to-know basis, except in case Customer is required to disclose the information by virtue of a court order or statutory duty, provided that the Customer shall immediately inform Apeel and reasonably cooperate with Apeel should it seek to obtain a protective order. Customer shall upon demand promptly return to Apeel all such information. Customer shall not retain a copy thereof. Customer shall treat the existence of the Agreement as confidential. Customer or its employees will sign a confidentiality agreement upon request.

24. LANGUAGE

Only the English version of these Conditions shall be authentic and shall prevail, in case of inconsistency, over any translation of these Conditions in another language.