

# SALES' GENERAL CONDITIONS



**MARCHIOL**  
Persone Competenze Soluzioni



## Definitions

**We believe that it is useful to be clear about the legal terms used in Sales General Condition.**

**If you need some help you can ask your trusted Marchiol salesman.**

**General Conditions:** this document provides, under art. 1341 Italian Civil Code, the exclusive regulatory framework for one or more Contracts executed between Marchiol and the Customer.

**Marchiol:** Marchiol S.p.A. with single shareholder, tax ID and VAT Reg. no. 01176110268, whose registered offices are in Strada Treviso Mare no. 10 in Roncade (TV).

**Customer:** any individual or organization who and/or which purchases Products distributed by Marchiol.

**Consumer:** the Customer who is an individual who acts for any purposes which are not connected to his/her business or professional activities. Marchiol provides these General Terms and Conditions driving, whenever its possible, a different treatment of the Customer, based on the protection offered to the Consumer under the legislation currently in force.

**Micro Enterprise:** companies and firms (e.g. installers, artisan, fitter, electrician, switchboard assembler/manufacturer, self-employed, association) that regardless of their legal form, engage in economic activity, even if operating as individual or family enterprises, employ fewer than 10 persons and have an annual turnover or total asset not exceeding € 2 million, as per article 18 of the Italian Consumer Code.

**Parties:** Jointly, Marchiol and the Customer.

**Commercial practices:** any action, omission, conduct, or commercial communication including advertising and marketing of the Product carried out by Marchiol in connection with the promotion, sale, or supply of the Product.

**Product:** the item (goods and services), falling within the scope of the Contract.

**Contract:** the specific agreement, even if not written, entered by and between Marchiol and the Customer and concerning the sale and purchase of one or more Products

**Supplier:** the entity, either manufacturer or distributor, from whom Marchiol purchases the marketed Products. Supplier is responsible for the compliance of the Products with the applicable European regulation.

**Sales promotion:** a promotional activity, for a limited number of Customers, whom with which Customers can win a gift if they reach goals or fixed purchase target.

## General Conditions

### Art. 1 – Value of the General Conditions – Prevalence

1.1 These General Conditions shall apply to any commercial relationship between Marchiol and the Customer and they shall be an integral part of each Contract. These General Conditions prevail over any other conditions set out in the Customer's purchase order. Any conditions differing from those contained in these General Terms and Conditions must be agreed upon by the Parties in writing.

1.2 These General Conditions may be modified only by the Parties in written form.

### Art. 2 – Execution of the Contract

2.1 The Contract between Marchiol and the Customer becomes effective with the acceptance by Marchiol of

Customer's order, which constitutes a proposal pursuant to art. 1326 of the Italian Civil Code.

2.2 Marchiol's order confirmation confirms the purchase order to the Customer. The Customer is obliged to immediately report to Marchiol any error or lack in the order confirmation, which may be reported in any way, unless the order is tacitly accepted.

2.3 The orders of the Customer may be submitted inside i) the regular points of sale; ii) on fairs and events; iii) at the telephone; by fax or e-mail; iv) through our e-commerce ([www.marchiol.com](http://www.marchiol.com)), or v) apps Marchiol e-shop.

### Art. 3 – Price

3.1 The product's price is fixed on Marchiol's brochures and price lists, on our e-commerce or, otherwise, with Marchiol's order confirmation.

3.2 Unless otherwise agreed, the prices shall not include taxes, duties or any another amount.

3.3 For some types of Products Marchiol sells, together with the Products the packaging material necessary to move it (e.g. coils, pallets ..) according to the fees provided by the current Service List. This packaging can be returned within 30 days following the delivery date. If packaging is damaged the Customer will have to pay the full price.

### Art. 4 – Delivery terms

4.1 Delivery terms, if indicated in the order confirmation will be valid only under regular availability and normal conditions of supply. Marchiol, as a distributor, will do everything possible to respect the delivery terms. Delivery terms are an obligation for Marchiol if the Customers will specify it in writing before issuing the purchase order.

4.2 The Customer is obliged to state in writing that the delivery term is essential under art. 1457 Italian Civil Code, by specifying the date beyond which the obligation may become useless as well as any penalties and/or charges which may be suffered by the Customer in case of a default or an incorrect or late performance (e.g. tenders with public contracting authorities).

4.3 The Customer hereby waives any compensation or claim to be filed against Marchiol for any direct, indirect and consequential damage arising from any delayed or incomplete performance, unless they are due to the fraud or gross negligence of Marchiol. In the case where the performance of the order is hindered by any Act of God, delayed delivery of the goods by the Supplier, the failure to achieve supplies on a regular basis or other unforeseeable circumstance which arose after the conclusion of the Contract, and in any case which cannot be charged to Marchiol, the delivery terms will be extended, without any liability of the latter for the delay, in an amount equal to the accumulated delay.

4.4 In the event that the Customer requests Marchiol an extension of the original delivery deadline for the Products, such extension may have a maximum duration of six months, starting from the date originally scheduled for delivery.

The request for an extension and the related approval must be made in writing.

4.5 In any case, upon expiry of the six months, Marchiol, after notifying the Customer accordingly, shall, at its sole discretion, either cancel the order or deliver the Products on the date duly communicated to the Customer and issue the corresponding invoice.

Marchiol works every day to develop long-term relationships with Customers and Suppliers. If the Customer is unsatisfied with the performance of Marchiol he can file a documented complaint to Marchiol. In this case Marchiol will examine the complaint and, when the claim is proved and rightful, will propose a solution involving all the parties concerned.

#### Art. 5 – Shipping

5.1. Product will be delivered to the Customer's premises, or another place specified in the order confirmation

5.2 The Products are considered delivered when Marchiol makes them available at the agreed delivery place.

5.3 The Customer must check the quantities and the condition of the Products packaging immediately upon delivery and to submit any complaint to carrier in writing on the delivery document. Any claim concerning the quantity and the condition of the delivered Products, that are not immediately verifiable at the time of delivery, will be rejected if the Customer has not submitted said complaints to Marchiol in writing within 8 days of the delivery.

5.4 Once the delivery of the Products is accepted, or if the above complaint is not submitted in a timely manner, the Customer shall no longer be entitled to move any complaint against Marchiol about the above mentioned faults of the placed order.

5.5. In the event that the Customer would choose for the method of fiduciary delivery, and therefore in the absence of personnel authorized by the Customer to receive the Products, the Customer declares to indemnify and guarantee Marchiol by any and all obligations to pay any kind of compensation for damages, indemnities and reimbursements.

#### Art. 6 – Statutory warranty

6.1 Products sold by Marchiol is covered by the warranty established under articles 1490 Italian Civil Code and 128 and following Italian Consumers' Code. The Italian legal warranty for conformity covers defects that manifest themselves within one year, two years if the Customer is a Consumer, from the delivery of the Products. Marchiol's liability does not extend to conventional warranties issued by the Supplier. Those warranties commit only the Supplier.

6.2 The complaint through which the Customer reports any fault of the Product to Marchiol and/or to Supplier shall: i) be forwarded to Marchiol by means of Registered Letter with acknowledgement of Receipt or certified e-mail; ii) be forwarded within the statutory terms, and therefore within 8 days of the delivery or of the discovery of the fault (such term shall not apply to the Consumer) and in any case within 1 year of the delivery of the Product (or 26 months, in the case of a Consumer); iii) be drafted in a thorough manner and include: a) the proof of purchase from Marchiol; b) a detailed report on the nature of the fault of the Product with any evidence on the date of discovery thereof; c) photo or video documents proving the complained fault; d) the requested remedy. If the Customer is a Consumer, the Italian legal warranty can be directly claimed from Marchiol, which however remains unrelated to the conventional warranting offered by the Supplier, binding only and exclusively the Supplier.

6.3 Marchiol commits to carry out an assessment on the actual existence of the fault, also together with the Supplier by the general principles of good faith and replies to the Customer in the shortest time possible.

In the majority of cases Marchiol's partners give better warranty conditions than the distributor's legal warranty. Marchiol negotiates daily with our Suppliers to provide Customers with the best economic and contractual conditions available to the market.

#### Art. 7 – Liability

7.1 The Supplier, under art 114 and 120 of Consumer's Code, is the only party which is responsible for damage caused by a faulty Product.

7.2 Marchiol shall be liable towards the Customer only when the damages arise from fraud or serious negligence of Marchiol within the limits of Marchiol's civil liability insurance policy.

#### Art. 8 – Retention of title

8.1 Products are sold under an express retention of title by Marchiol, to guarantee timely payment from the Customer.

8.2 Failure to pay the price of the Products, even one of the instalments (if provided), or any other claim owed by Marchiol to the Customer confers on Marchiol the right to terminate the Contract under art. 1456 Italian Civil Code and the right to reclaim the Products in retention of title, and to request the return of the unpaid Products at the expense of the defaulting Customer.

#### Art. 9 – Payments

9.1 The payments shall be carried out at the domicile of the Marchiol, under art. 1182 third paragraph Italian Civil Code upon delivery or, in case of continuous supply relationship, within the agreed deadlines.

9.2 In case of late payments the interest rate established under art. 5 Legislative Decree no. 231/2002 (as from time to time amended and/or integrated) shall be applied, without requiring any formal notice of default, increased by the collection costs under art. 6 Legislative Decree no. 231/2002 (as from time to time amended and/or integrated) which are hereby established in the sum of Euro 40.00 for each overdue invoice.

9.3 Marchiol, as a sign of best cooperation possible with the Customer, undertakes to request the payment, by telephone or in write form, before suing the Customer. If necessary the costs will be ascribed to the Customer, increased by the collection costs under art. 6 Legislative Decree no. 231/2002.

9.4 Any failed or late payment shall lead to the operation of the compulsory acceleration clause with the consequential obligation for the Customer to fully pay any outstanding sum. Any failed or late payment by the Customer, as well as any failed performance of any obligation undertaken it, shall entitle Marchiol to suspend the sales and the relevant deliveries until the final payment. Marchiol shall terminate the Contract under art. 1456 Italian Civil Code.

9.5 Marchiol reserves also the right to suspend the supplies, as well as to the operation of the acceleration clause, in the cause i) increase Products ordered against deferred payment terms; ii) where a significant change in the economic/financial standing of the Customer occurs such as, by way of example, in case of receivership proceedings or any advance settlement proceedings or any other bankruptcy proceedings; iii) cessation of the business in full or in part; iv) change of the company purpose; v) serious criminal events relating to a violation of Code of Ethics and Suppliers' Code of Conduct, of the Model 231 and the Integrated Corporate Policy for the Prevention of Corruption, Bribery and Fraud of Marchiol.

9.6 Any discount as well any other form of incentives, bonus or premiums agreed by the Parties in writing, are subject to



the strict compliance with the payment terms. The failed payment within the agreed term shall imply the loss of the benefit of such discounts and incentive forms, bonus or premiums.

#### **Art. 10 Export**

10.1 The Customer commits to respect all rules, including trade restrictions, commercial, financial law and embargo, that can be applied by the national state authority, the European Union and by third countries (such as The United States). The Customer acknowledges that the failure to comply with the rules could lead serious economic and reputational damage to Marchiol and the Supplier.

10.2 The Customer must not export, transfer or utilize Products bought from Marchiol outside the European Union. These operations must preventively be formally authorized by Marchiol and by the Supplier.

10.3 The Customer must supply documentation about final users of the Products, shipping, destination and export if requested with the highest grade of cooperation

10.4 The Customer is responsible for the proper fulfilment of export obligations, tax, tribute and customs duties for the export or the intra-Community supply. The Customer must provide Marchiol with proof of exit of the Products from Italy or European Union.

10.5 Supplier and Marchiol are not responsible for non-compliance under the provisions of this article and the Customer shall indemnify Marchiol and Supplier from and against any and all liabilities, prejudicial consequences, including, without exception, claims, taxes, tributes, customs duties, reimbursements.

**Every day, Marchiol sells Products manufactured by hundreds of Suppliers based mainly in Italy or Europe. These Products are compliant with Italian and European regulation. Products cannot always be re-sold outside the European Union, due to the fact that not all the Products are compliant with foreign legislation. Marchiol is also able to provide preferential and non-preferential origin declarations of the Products, if requested at the time of the order. Marchiol's staff is trained to satisfy Client's enquiries about export control regulation and Origin Declaration.**

#### **Art. 11 – Governing Law**

These General Conditions of sales, and any legal relationship falling within their scope, shall be governed and interpreted according to the Laws of Italy, excluding expressly the 1980 Vienna Convention on the International Sale of Goods.

#### **Art. 12 – Jurisdiction and venue**

12.1 The Courts sitting in Treviso shall have the sole jurisdiction on any dispute regarding, or in any way connected to these General Conditions of sales and to legal relationships under the same general conditions and concerning its interpretation and/or performance.

12.2 In the event that the Customer is a Consumer, pursuant to art. 66-bis Consumer Code, civil disputes relating to the Contract concluded by the Consumer are devolved to the mandatory territorial jurisdiction of the court of the place of residence or domicile of the Consumer.

12.3 We also inform that pursuant to Reg. EU n. 524/2013, for the resolution of disputes relating to online contracts, there is the possibility of recourse to the Online Dispute Resolution (ODR), provided by the European Commission

and available at the following link:  
<https://webgate.ec.europa.eu/odr/>.

12.4 The Parties hereby undertake to submit, before starting any judicial proceedings, a request of mediation before the Curia Mercatorum, Centro di Mediazione ed Arbitrato della Camera di Commercio di Treviso, which will decide according to their current Regulations.

#### **Art. 13 – Ethical and Conduct Clause**

13.1 Marchiol adopts an Organisation, Management and Control Model under Legislative Decree no. 231/2001, together with a Code of Ethics and Suppliers' Code of Conduct and the Integrated Corporate Policy for the Prevention of Corruption, Bribery and Fraud, which are available for review at its internet website [www.marchiol.com](http://www.marchiol.com).

13.2 The Customer undertakes to comply with the provisions of these documents and undertakes as well, pursuant to art. 1381 Italian Civil Code to require that also any employee or consulting who may be employed in the relationship with Marchiol complies therewith.

13.3 Any failed compliance by the Customer with said obligations, as set forth under section 13.2, shall be deemed a serious default of the contractual obligations and shall entitle Marchiol to immediately terminate the contract, pursuant to art. 1456 Italian Civil Code, in addition to request the refund of any suffered damage.

#### **14. Promotional Initiatives**

14.1 At the invitation of Marchiol, the Customer may join one or more Promotional Initiatives activated during the calendar year.

14.2 The Promotional Initiatives, as intended for a limited selection of Customers based on internal evaluations of Marchiol, do not constitute competitions or prizes and are not subject to the regulations of D.P.R. n. 430/2001.

14.3 The Promotional Initiatives are regulated by particular conditions. Customers must accept the regulation in order to adhere. Participation in the initiative shall be confirmed to the Customer by certified e-mail.

14.4 The Customer shall supervise the correct activation of credentials by its employees; the progress of purchases during the Promotional Initiative and the diligent delivery of any prize obtained to a legal representative.

14.5 Any kind of award granted by Marchiol, in fulfilment of the objectives reached during these Promotional Initiatives, is reserved exclusively for the Customer and cannot be considered in any way intended for the individual employee.

#### **15 – Ius Variandi**

15.1 In the case of external circumstances of exceptional importance concerning the conditions of supply of the Products, MARCHIOL reserves the right to unilaterally change the price conditions and delivery of the Products, even after the order confirmation has been sent.

15.2 In any case, without prejudice to the right of the Customer, against the unilateral variation mentioned above, the Customer could withdraw from the orders limited to the items subject to increase.

#### **16 – Unfair Commercial Practices**

16.1 Marchiol undertakes to comply with all legal provisions concerning unfair commercial practices, as defined by the Italian Consumer Code and by the applicable European regulations. A commercial practice is considered unfair if it

is contrary to professional diligence and is false or likely to materially distort the economic behavior, in relation to the product, of the average consumer it reaches or to whom it is addressed, or of the average member of a group when directed to a specific category of consumers.

16.2 Marchiol declares that the information contained in the contract, purchase orders, order confirmations, and promotional materials is accurate and truthful, and is not intended to mislead the Consumer or the Micro Enterprise.

16.3 Consumer or Micro Enterprise are invited to report any violations of the rules on unfair commercial practices to Marchiol and/or to the competent authorities.

\_\_\_\_\_(Place), \_\_\_\_\_ (Date)

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*The Customer (stamp and signature)*

Pursuant to articles 1341 and 1342 Italian Civil Code, the Customer declares to have reviewed and specifically approved the following clauses of the General Terms and Conditions: Art. 1 – Value of the General Conditions, Art. 3 – Price, Art. 4 – Delivery terms, Art. 5 – Shipping, Art. 6 – Statutory warranty, Art. 7 – Liability, Art. 8 – Retention of title, Art. 9 – Payments, Art. 10 – Export, Art. 11 – Governing Law, Art. 12 – Jurisdiction and venue, Art. 13 – Ethical and Conduct Clause, Art. 15 – Ius Variandi.

\_\_\_\_\_(Place), \_\_\_\_\_ (Date)

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*The Customer (stamp and signature)*