

**N.B. This document is available in a larger font size upon request**

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## CONDITIONS OF SALE

The Buyer's attention is drawn in particular to the provision of Condition 10.

### 1. DEFINITIONS

1.1 In these Conditions, the following meanings apply:-

"**Applicable Law**" shall mean all relevant or applicable laws, rules, regulations, bye-laws, codes of practice, ethical guidelines, conditions, provisions, or other requirements of regulatory authorities, as amended from time to time.

"**Buyer**" shall mean the person or company who purchases the Goods from the Seller.

"**Conditions**" shall mean these standard terms and conditions of sale of the Seller.

"**Contract**" shall mean the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.

"**Goods**" shall mean the goods including materials, designs or formulations (or any part of them) set out in the Order.

"**Intellectual Property Rights**" shall mean patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Order**" shall mean an order placed by the Buyer for the supply of the Goods whether verbally or in writing and whether supply shall mean the sale, lease, hire or loan of the Goods.

"**Packaging**" shall include all forms of packaging, wrapping, pallets or containers supplied in conjunction with the Goods, all being considered adequate in the Seller's reasonable opinion.

"**Recommendations for Use**" shall mean any recommendations relating to the storage, handling, application and/or use of the Goods contained in the published literature current at the time of the supply provided by the Seller or a Supplier or any recommendations made in writing by an authorised representative of the Seller or a Supplier.

"**Seller**" shall mean WhitChem Limited (registered in England and Wales with company number 2523537) and also, where the context permits, its sub-contractors or agents.

"**Supplier**" shall mean any person or company who or which supplies the Goods to the Seller in substantially the form in which they are sold to the Buyer, including but not limited to a third party manufacturer.

1.2 Unless the context otherwise requires, words in the singular shall include the plural and vice versa, a reference to one gender shall include all other genders and a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded. A reference to a statute or statutory provision includes any subordinate legislation made under statute or statutory provision, as amended or re-enacted.

1.4 Clause headings do not affect the interpretation of this Contract.

1.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to **writing** or **written** shall include letter, fax, email and comparable means of communication.

1.7 The Seller reserves the right to assign, sub-contract or sub-let the fulfilment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or burden of the Contract without the written consent of the Seller.

1.8 Time is of the essence in relation to all the Buyer's obligations under these Conditions.

1.9 Unless specifically agreed in writing to the contrary, all commercial terms shall be interpreted in accordance with the International Chamber of Commerce's INCOTERMS current at the time the Order is placed.

### 2. ORDERS, ACKNOWLEDGEMENTS, CONDITIONS AND VARIATIONS

2.1 An Order shall only be deemed to be accepted at the earlier of: (a) the Seller issuing a written confirmation of the Order to the Buyer; or (b) delivery of the Goods by the Seller to the Buyer pursuant to the Order, at which point the Contract shall come into existence. An acknowledgment of an Order by the Buyer prior to supply shall not be deemed as confirmation of the Order.

2.2 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous statements, promises, warranties and representations (except fraudulent misrepresentations) made by or on behalf of the Seller, whether written or oral, relating to the subject matter. The Buyer acknowledges that it has not relied on any statement, promise, warranty or representation made or given by or on behalf of the Seller which is not set out in the Contract and the Seller shall not be liable for any loss or damage incurred by the Buyer relying on such representations or failing to satisfy itself of the accuracy thereof.

2.3 If the Seller enters into the Contract without incorporating these Conditions but where the Buyer has had prior notice of them then the Contract shall be subject to these Conditions.

2.4 No variation of the Contract by the Buyer shall be effective unless made in writing and signed on behalf of the Seller. In the event of such variation the Buyer shall indemnify and keep indemnified the Seller in full against all loss including loss of profit, revenue and opportunity, costs (including labour and materials), damages, charges and expenses incurred (directly or indirectly) by the Seller as a result of the variation.

### 3. GOODS - DESCRIPTION, SAMPLES AND SUITABILITY

3.1 Any samples, drawings, illustrations, descriptive matter, specifications or advertising provided or made available by the Seller are for the sole purpose of giving an approximate idea of the Goods described. Any conditions or warranties, express or implied, that the Goods shall

correspond with such information are expressly excluded. They shall not form part of the Contract nor have any contractual force. The Contract is not a sale by description nor a sale by sample.

3.2 The Buyer shall take all necessary steps to inspect the Goods and properly satisfy itself that all information, statements and representations relating to the Goods (including labelling, products code and descriptions) are accurate and fair in all respects. The Buyer shall be deemed to have taken all requisite measures, including appropriate testing, to satisfy itself as to the suitability of the Goods for particular purposes, products and/or production methods and any liability of the Seller in respect of the same is expressly excluded. The Seller makes no representations as to the suitability of the Goods for any purpose and any investigations into the suitability of the Goods for a particular purpose are the sole responsibility of the Buyer.

3.3 The Seller reserves the right to alter or amend the specification and/or quantity of the Goods and/or the Order provided such alteration or amendment is required to ensure that the Goods comply with all applicable health and safety requirements and other Applicable Law or does not materially affect their quality or performance, and no such change will constitute a breach of Contract or impose upon the Seller any liability whatsoever.

### 4. PRICES AND QUOTATIONS

4.1 The Seller's quotations are provisional and the price payable for the Goods shall be the list price of the Seller at the date of issue of the Seller's written Order confirmation (communicated to the Buyer at the time of delivery or as soon as practicable thereafter), notwithstanding any earlier delivery of the Goods to the Buyer.

4.2 The Seller shall be entitled to request a prepayment in respect of the Contract from the Buyer. Such prepayment shall be applied as follows:-

4.2.1 if the Contract is performed in full by both parties the prepayment shall be retained by the Seller in reduction of the total price payable by the Buyer under the Contract;

4.2.2 if the Buyer is either in default of any of its obligations under the Contract or cancels or suspends the Contract in accordance with Condition 18 the prepayment shall be set off by the Seller against its proper costs, losses or damages arising in connection with the default and/or cancellation or suspension.

4.3 Unless specified to the contrary at or before the Contract is made, prices are inclusive of Packaging and standard carriage (excluding timed and/or urgent delivery) and insurance to the nominated delivery address of the Buyer, if situated within the United Kingdom. If particular or additional protection is required beyond the Packaging, the Buyer must specify this before the Contract is made. Value Added Tax will be charged at the rate applicable at the date of the invoice.

4.4 The Buyer agrees to pay for any loss or extra cost incurred by the Seller through the Buyer's incorrect or lack of instructions.

4.5 The costs of obtaining any necessary export licences for the Goods shall be paid by the Buyer.

### 5. FORCE MAJEURE

The Seller shall not be responsible to the Buyer for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond the Seller's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanction, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic or similar events, natural disasters or extreme adverse weather conditions, or default of Suppliers or subcontractors.

### 6. DELIVERY

6.1 Delivery of Goods shall be deemed effected by the Seller at the following times:-

6.1.1 if Goods are delivered by the Seller or independent carrier when they arrive prior to unloading at the Buyer's premises or Buyer's nominated premises;

6.1.2 if Goods are delivered by container the earlier of when they are loaded onto transport for delivery to the container depot or loaded into the container; or

6.1.3 upon collection of the Goods by or on behalf of the Buyer.

6.2 The Buyer will provide at its expense at the point of delivery to the Buyer appropriate equipment and manual labour for unloading the Goods.

6.3 Whilst the Seller will use reasonable endeavours to complete the Contract by any date specified, the time for performance of the Contract by the Seller is not of the essence. The Seller's failure to deliver by any due date shall not constitute a breach of Contract and the Seller shall not in any circumstances be responsible for any direct or consequential loss or damage of any kind whatsoever. The Seller shall be entitled to reschedule delivery dates, taking into account its commitments to third parties and may also wholly or partly suspend deliveries of Goods. The Buyer shall accept rescheduled or suspended delivery of such Goods unless the Buyer has cancelled the Contract in accordance with the provisions of Condition 18.

6.4 The application of Section 32(2) and Section 32(3) Sale of Goods Act 1979 are expressly excluded from these Conditions.

6.5 If the Buyer fails to take delivery of the Goods pursuant to this Condition 6 or if the Seller is prevented from delivering the Goods in accordance with the Contract as a result of delay or default on the part of the Buyer or any other reason beyond the Seller's reasonable control, then, except where such failure or delay is caused by the Seller's failure to comply with its obligations under the Contract, the Seller may at its discretion store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including haulage and insurance). The Buyer shall indemnify and keep indemnified the Seller in full against all costs, losses, damages and



expenses arising in connection with storage. Notwithstanding Condition 13, risk in the Goods shall pass to the Buyer as if the Buyer had not failed to take delivery of the Goods.

6.6 If the Buyer has not taken delivery within 1 month from the delivery date in the Order, the Seller may resell or otherwise dispose of part or all of the Goods and charge the Buyer for all related costs and expenses.

## 7. QUANTITIES AND INSTALMENTS

7.1 The Seller may deliver the Goods by instalments which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment. Failure by the Buyer to make payment by the due date for any individual instalment shall entitle the Seller to suspend deliveries of Goods under the Contract without prejudice to any other right the Seller may have under these Conditions.

7.2 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5% more or less than the quantity of Goods ordered.

## 8. DAMAGE IN TRANSIT / SHORTAGES / EXCLUSION OF BUYER'S RIGHTS OF REJECTION

8.1 Subject to Condition 6, where the Seller is responsible for delivery the Seller may at its discretion, make good, replace or add to the next delivery any Goods which are short, lost or partially lost or damaged in transit to the place of delivery. In such circumstances the time for the delivery shall be extended to such period as the Seller may reasonably require.

8.2 The Buyer shall inspect the Goods and no claims for shortages, partial loss or damage to Goods in transit will be accepted by the Seller unless:-

8.2.1 they are notified in writing by the Buyer to the Seller (with a copy to the carrier if the Seller's own vehicles were not used) within 7 days of delivery (in the case of partial loss or damage in transit) or 14 days of the invoice date (in the case of non-delivery). For exported Goods, the above periods shall be extended to 14 days and 36 days respectively; and

8.2.2 the Goods in respect of which a claim is made together with the Packaging must be kept as received for a period of 21 days from notification of any claim and the Buyer permits the Seller full access to inspect the goods and investigate the claim.

8.3 Section 35A of the Sale of Goods Act 1979 shall not apply.

## 9. WARRANTY

9.1 Where the Goods are not manufactured by the Seller and are delivered by the Supplier or a third party directly to the Buyer or collected by or on behalf of the Buyer from the Supplier or other third party, the Seller shall not be liable for any loss or damage to such Goods whatsoever.

9.2 Where Goods are supplied by the Seller but manufactured by a third party, the Seller shall use its best endeavours to pass on to the Buyer any benefits relating to warranties in respect of or guarantees of such Goods which the Seller has under contract with that third party.

9.3 Subject to Conditions 9.1 and 9.2, where Goods have been supplied by the Seller and a defect in the Seller's materials or workmanship appears in the Goods not later than 4 weeks after the date on which the Seller notifies the Buyer that the Goods are ready for delivery or, if there was no such notification, the date of delivery, the Seller undertakes at its discretion to either:-

9.3.1 supply free of charge and in exchange for the original Goods a replacement of any defective Goods; or

9.3.2 credit the Buyer in full for the price paid by the Buyer to the Seller.

9.4 The Seller's liability under this Condition 9 shall automatically cease if:-

9.4.1 the Buyer has not paid for all Goods supplied under any Contract by the due date or is otherwise in breach of this or any other contract made with the Seller;

9.4.2 the Seller is denied full and free right of access to the allegedly defective Goods;

9.4.3 the Buyer has not properly maintained and stored the Goods or has not complied with any Recommendation for Use;

9.4.4 the Buyer or any person (other than the Seller or a person authorised by the Seller) has mixed the Goods with other goods;

9.4.5 the Buyer uses any replacement Goods not manufactured or provided by the Seller;

9.4.6 the defect or failure is caused by a breach by the Buyer of its undertakings and warranties contained in Condition 16;

9.4.7 the defect or failure is caused by fair wear and tear, natural decomposition or ageing of the Goods, wilful damage, dirt, neglect, mis-use, accident, abnormal storage or working conditions or continued use after a defect became apparent;

9.4.8 the Buyer has not immediately notified the Seller in writing of any defect or suspected defect to enable the Seller to investigate the complaint before the remainder of the consignment is used or returned; or

9.4.10 the Buyer has not kept the defective Goods and the corresponding Packaging until the warranty claim has been resolved by the Seller.

9.5 The undertaking set out in Condition 9.3 shall be in lieu of any warranties, conditions or undertakings whether express or implied by statute, common law or otherwise except that no exclusions will apply to any implied condition that the Seller has or will have the right to sell the Goods when the title in the Goods passes.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Seller's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), for fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979, defective products under the Consumer Protection Act 1987 or any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

10.2 The Buyer acknowledges that the Seller is unable to agree individual limitation of liability provisions with the Buyer in relation to Goods that are supplied by the Seller but manufactured by a third party and, in order for the Seller to offer its best possible price to the Buyer, any limitation of liability imposed by such Supplier - to the extent legally possible - apply mutatis mutandis to the relevant Contract between the Seller and the Buyer. The Buyer agrees that this Condition 10.2 is fair and reasonable and accepts the limitation of liability set out herein. The Seller agrees to pass on to the Buyer any available information in relation to the Supplier's limitation of liability provisions upon reasonable request made by the Buyer in writing.

10.3 Without prejudice to any other express Condition, the Seller's total liability whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty, or otherwise for any claims, damages, losses or liabilities (including any direct, indirect or consequential losses) arising out of or in connection with this Contract including any defect in the Goods however caused shall be limited to the value of the Contract. The Buyer is advised to take out additional insurance against any potential further loss, damage, expense or liability whether foreseeable or otherwise.

10.4 The Seller will in good faith use reasonable endeavours to pass on relevant information provided to it by the manufacturer or Supplier of the Goods but (without prejudice to the generality of this Condition 10):-

10.4.1 any certificate of conformity or health and safety data supplied in relation to the Goods is based on the product data sheet or safety data sheet current at the date of delivery and the Seller shall be under no liability in respect of any errors in such; and

10.4.3 any certificate of analysis supplied by the Seller for not yet manufactured Goods shall be passed on to the Buyer and the Seller shall be under no liability in respect of errors in the Supplier's certificate of analysis or any other information supplied to the Seller by the Supplier.

10.5 Any technical information and assistance provided by the Seller shall be given at the Buyer's risk and shall not imply any warranty or representation.

## 11. HAZARDS AND SAFETY INFORMATION

11.1 The Buyer agrees that it will:-

11.1.1 familiarise itself with all hazards and precautionary procedures with respect to the storage, handling, transportation and use of the Goods, products made in whole or in part from the Goods ("Derived Products") and the Packaging (including packaging for Derived Products) are shipped and shall manage and store the Goods, Derived Products and Packaging accordingly;

11.1.2 forward all product safety information provided by the Seller and Supplier to the Buyer's employees, all others who handle the Goods or Derived Products and the Buyer's customers; and

11.1.3 when returning the Goods to the Seller for any reason, comply with Applicable Law relating to the transport and packaging of hazardous and/or dangerous goods.

11.2 The Buyer shall indemnify and keep indemnified the Seller in full against all loss and damage (including costs) resulting from the Buyer's failure to comply with the provisions of Condition 11.1.

## 12. TITLE AND RISK

12.1 Risk in the Goods shall pass to the Buyer at the time of delivery of such Goods.

12.2 Title to the Goods shall only pass to the Buyer upon:-

12.2.1 payment by the Buyer to the Seller of all sums (including any default interest) due under the Contract and under all other Contracts between the Seller and the Buyer in respect of which payment has become due; or

12.2.2 notice in writing from the Seller specifying that title in the Goods has passed.

12.3 The Seller may recover Goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licenses the Seller to enter any premises of the Buyer for the purpose of either satisfying itself that Condition 12.4 is being complied with by the Buyer or of recovering any such Goods.

12.4 Until title to the Goods has passed to the Buyer it shall possess the Goods as fiduciary agent and bailee of the Seller. The Buyer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Seller. The Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and maintain them in a satisfactory condition. During such time as the Buyer possesses the Goods with the Seller's consent, the Buyer may in the normal course of business sell or hire the goods as principal and without committing the Seller to any liability to the person dealing with the Buyer.

## 13. INSURANCE

Notwithstanding the reservation of title contained in Condition 12.2 the Buyer shall insure the Goods and/or any products made wholly or partly therefrom for the full amount of the price payable under the Contract until the date title in the Goods passes to the Buyer.

## 14. TERMS OF PAYMENT

14.1 Payment for the Goods shall be made in the currency of the invoice or such other currency as the Seller may require. Where the Seller requires payment in a different currency to that stated in the Order, the rate of exchange applicable shall be the mid selling point for the invoiced currency as quoted in the Financial Times of London on the date payment is made. Payment in full shall become due and the Seller reserves the right to require immediate payment at the earlier time of delivery (and in the case of delivery by instalments at the time of delivery of each instalment), or when the Buyer receives notification that the Goods are in a deliverable state, or the date of the invoice.

14.2 Subject to Condition 14.1 and unless otherwise agreed in writing, the Buyer shall pay all invoices in full and in cleared funds by the 20<sup>th</sup> of month following the month of the invoice.

14.3 A default by the Buyer in the payment of any due invoices or failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause all unpaid invoices relating to an Order to become due immediately.

14.4 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except as required by law).

14.5 Without prejudice to the Seller's statutory rights, interest at 4% per annum above the Bank of Scotland's base rate from time to time in force will be charged by the Seller on the amount outstanding and shall be payable by the Buyer from the date on which any payment is due until actual payment. Interest shall be calculated on a daily basis and shall be compounded quarterly. The Seller reserves the right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998. The Buyer shall pay the interest together with the overdue amount.

14.6 So long as any payment due from the Buyer is outstanding, the Seller shall have a general lien on any Goods and any other property of the Buyer in its possession and shall be entitled to retain them and/or suspend work on any Contract. Further, the Seller shall be entitled on the expiration of not less than 14 days' notice in writing to the Buyer to dispose of such property and to apply the proceeds towards satisfaction of any such outstanding payments.

## 15. INTELLECTUAL PROPERTY AND BUYER'S PROPERTY

15.1 Unless otherwise agreed in writing by the Seller, the Buyer acknowledges that all Intellectual Property Rights used by or subsisting in the Goods are and shall remain the sole property of the Seller or (as the case may be) the third party rights owner.

15.2 Except as otherwise provided in accordance with the Conditions, the Buyer warrants and undertakes that it shall not utilise any of the Intellectual Property Rights other than in respect of the use or re-sale of the Goods in the ordinary course of its business and it shall not give away, loan, exhibit or sell any of the Intellectual Property Rights unless if it is in connection with the Goods for which they are issued.

15.3 If it is agreed in writing that ownership in any Intellectual Property Rights shall pass to the Buyer, property shall only pass when such items have been paid for by the Buyer in full in accordance with Condition 14 and any Intellectual Property Rights that are transferred or licensed shall only be used by the Buyer on the express terms agreed to in writing by the Seller.

15.4 Where Goods are manufactured or supplied in accordance with a specification supplied by the Buyer, or where standard goods of the Seller are altered in accordance with the Buyer's instructions, the Buyer shall indemnify, keep indemnified and hold harmless the Seller and any Supplier not only for the suitability and fitness of the specification, but also from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Seller as a result of or in connection with any claim made against the Seller for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Seller or Supplier's use of the specification. This Condition 15.4 shall survive termination of the Contract.

15.5 In the event of any goods, materials, plant, tools, equipment or other property being supplied by or on behalf of the Buyer to the Seller to enable or assist the performance of the Contract such items shall remain at the Buyer's risk. In such circumstances, the Seller will not be responsible for any loss or damage to any of the above listed items supplied, unless such damage or loss is due directly to the negligence of the Seller and in any event the Seller's liability shall be limited at the option of the Seller to the replacement or the payment of the open market value of such and under no circumstances shall the Seller be liable for any consequential loss or damage. The Buyer is advised to insure such property for all risks.

15.6 The Buyer shall indemnify and keep indemnified the Seller in full against any loss, damage or expense which the Seller may incur directly or indirectly as a result of any defects in such goods, materials, plant, tools, equipment or other property supplied by the Buyer under Condition 15.5.

## 16. BUYER'S WARRANTIES

- 16.1 The Buyer warrants to the Seller that:
- 16.1.1 it shall use and store the Goods strictly in accordance with all Recommendations for Use and in accordance with Applicable Law governing the use or storage of the Goods;
- 16.1.2 any means of transport provided by the Buyer or any agent of the Buyer shall comply with Applicable Law; and
- 16.1.3 none of the Goods will be exported to any country in contravention of any UK, EU or UN policy or, save only as far as applicable competition law allows, to any country expressly prohibited by a Supplier of the Goods and that none of the Goods are intended for use in any chemical weapon and the Buyer will use its best endeavours to ensure that the Goods are not so exported or used. The Buyer shall make appropriate arrangements for the storage, transportation and recycling or disposal of the Goods, materials or waste derived from the Goods and Packaging in compliance with any Applicable Law.
- 16.2 If, in the reasonable opinion of the Seller, the Buyer is, or is about to be, in breach of any of the warranties contained in this Condition 16, the Seller may without notice refuse to deliver all or any part of the Goods and no liability of any kind shall attach to the Seller and the Seller shall be entitled to recover from the Buyer all transport and other costs incurred by the Seller.
- 16.3 Delivery by the Seller of all or any part of the Goods shall not imply any admission or acceptance that the Buyer's storage or transport facilities are adequate and suitable.
- 16.4 Inspection by the Seller of the Buyer's storage or transport facilities for any reason shall not imply any liability of the Seller for any loss or damage arising from their use.
- 16.5 The Buyer shall indemnify and keep indemnified the Seller in full against all losses, damages, costs (including legal costs on an indemnity basis), claims and actions which arise directly or indirectly as a result of a breach by the Buyer of the warranties contained in this Condition 16.

## 17. LABELS AND WARNINGS

- 17.1 The Buyer shall ensure that the Goods and any building, compound, container or vehicle in which they are stored or transported bear such labels and warning notices as are required by Applicable Law.
- 17.2 The Buyer shall not remove, deface or obscure any of the labels or warning notices on the Seller's Packaging or containers in which the Goods are delivered except where the Buyer immediately replaces the same with suitable labels or warning notices in compliance with Condition 17.1.

## 18. TERMINATION AND SUSPENSION

- 18.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer, if the Buyer:
- 18.1.1 (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an Insolvency Event);
- 18.1.2 (being an individual) is declared bankrupt, enters into any composition of arrangement with his/her creditors, has a receiver appointed to any of his/her assets, or ceases to carry on business, takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him/her or any other person in respect of these circumstances (also an Insolvency Event) (or, the Buyer being a partnership, has a partner to whom any Insolvency Event applies);
- 18.1.3 fails to give delivery instructions or take delivery of the Goods at the time agreed or, if no time is agreed, within a reasonable time; or
- 18.1.4 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 18.2 Without limiting its other rights or remedies, if the Buyer becomes subject to an Insolvency Event, or the Seller reasonably believes that the Buyer is about to become subject to become subject to an Insolvency Event, the Seller may:
- 18.2.1 suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller, including stopping any Goods in transit and suspension or cancellation of further deliveries;
- 18.2.2 hold by way of general lien all materials or other property of the Buyer in the possession of the Seller in respect of work carried out or to be carried out by the Seller for the Buyer or for the general balance of account for the time being owing to the Seller by the Buyer; and/or
- 18.2.3 terminate the Contract immediately and if the Goods, or any part of them, have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary but without prejudice to the Seller's right to any unpaid price for Goods delivered under the Contract and to damages for loss (both direct and indirect) suffered in consequence of such determination.
- 18.3 Cancellation of the Contract shall be requested by the Buyer in writing and will only be accepted at the sole discretion of the Seller which will not be exercised unreasonably and unless otherwise agreed in writing only upon condition that any costs, charges or expenses (both direct and indirect) incurred by the Seller up to the date of cancellation and the value of all loss or damage (both direct and indirect) incurred by the Seller because of such cancellation will be reimbursed by the Buyer to the Seller immediately before such cancellation is effective. Acceptance by the Seller of any cancellation request by the Buyer will only be binding upon the see if the Seller's acceptance is made in writing.
- 18.4 The Seller shall suspend the performance of the Contract upon receipt of a request in writing from the Buyer for a period not exceeding 28 days. The Buyer shall reimburse the Seller for all storage charges and other additional costs that the Seller may incur and such costs shall be added to the price for the Goods. If the suspension continues for a period of more than 28 days then the Seller may terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Condition 18.2.
- 18.5 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 18.6 The Seller's rights contained in Condition 12 (but not the Buyer's rights) shall continue notwithstanding termination of the Contract for any reason.
- 18.7 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 18.8 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 19. EXTRA COSTS AND ADDITIONAL GOODS

- 19.1 The Buyer shall pay to the Seller any extra costs incurred as a result of any variation, delay or suspension of work arising from any act or omission of the Buyer or any other contractor employed by the Buyer or any other circumstance for which the Seller is not responsible.
- 19.2 Where the Buyer requires Goods to be provided in addition to those set out in the Order but as a part of the Contract, the Buyer shall place an amended Order in writing therefore and upon acceptance in writing by the Seller of such Order the provisions of these Conditions shall apply to those additional Goods.

## 20. SAFETY REGULATIONS ON EXPORTED GOODS

If Goods supplied under the Contract are to be used outside the United Kingdom the Buyer shall be deemed to have satisfied itself that such Goods comply with the Applicable Law of any country or state in which the Goods are to be so used, and any other relevant jurisdictions, and the Buyer

shall indemnify and keep indemnified the Seller in full against any loss or damage whatsoever which the Seller may incur if such Goods do not comply with such Applicable Law.

## 21. ANTI-CORRUPTION

- 21.1 The Buyer shall:
- (a) comply with all Applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Condition 21.1(b), and will enforce them where appropriate;
- (d) promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of this Agreement;
- (e) if requested to do so by the Seller, certify to the Seller in writing signed by an officer of the Buyer, compliance with this Condition 21 by the Seller and all persons associated with it. The Buyer shall provide such supporting evidence of compliance as the Seller may reasonably request.
- 21.2 For the purpose of this Condition 21, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

## 22. LAW

These Conditions and every Contract made pursuant to them shall be governed by and construed in accordance with English law and the Seller and the Buyer hereby agree to submit to the non-exclusive jurisdiction of the English courts.

## 23. MEDIATION

If any dispute arises out of the Contract (other than in relation to a dispute concerning payments by the Buyer) the parties will use all reasonable endeavours to resolve it by negotiation. If negotiations fail to resolve the dispute the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. To initiate mediation a party shall give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. The mediation shall commence within 28 days of the Mediation Notice being served. No party may commence court proceedings in relation to the dispute until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## 24. GENERAL

- 24.1 In this Condition 24, "Business Day" shall mean any day other than Saturday, Sunday or public holiday in the place at which such notice is left or to which such notice is despatched.
- 24.2 Any notice given to a party under or in connection with the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as notified pursuant to this provision to the party giving the notice and shall be deemed to have been served:
- 24.2.1 if delivered by hand, on the first Business Day following delivery;
- 24.2.2 if sent by post, on the third Business Day after posting if the address of the recipient is in the country of despatch, otherwise on the seventh Business Day after posting;
- 24.2.3 if sent by fax, on the first Business Day following successful transmission.
- 24.3 A notice given under the Contract is not valid if sent by email.
- 24.4 In proving service in the case of a notice sent by post proof of postage, and, in the case of a fax, proof of successful transmission shall be sufficient.
- 24.5 No waiver by the Seller of any right or remedy under a Contract by the Buyer shall be considered as a waiver of any subsequent breach or default and no failure or delay by the Seller to exercise any right or remedy provided under the Conditions or by law shall constitute a waiver of that or any other remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 24.6 If any provision of these Conditions is or becomes invalid, illegal or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this Condition shall not affect the validity or enforceability of the rest of the Contract.
- 24.7 No one other than a party to the Contract shall have any right to enforce any of its terms.

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