

INEOS VINYLs UK LIMITED – Terms and Conditions of Sale (November 2009)

1 DEFINITIONS

In these Conditions the following words and expressions shall have the following meanings:

- 1.1 **"Affiliate"** means any person that is directly or indirectly controlled, or is controlled by, or is under the common control with, the Seller at any time; and for this purpose control over any person shall mean the power to direct the management or policies of that person;
- "Business Day"** means any day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business;
- "Buyer"** means the buyer of the Goods and/or Services;
- "Conditions"** means these terms and conditions of sale;
- "Contract"** means a legally binding contract between the Seller and the Buyer for the sale and purchase of Goods and/or Services ordered under a Purchase Order and accepted by the Seller in accordance with Clause 2.5 subject to these Conditions;
- "Contract Year"** means the 12 month period beginning on the commencement date of the Contract and each subsequent 12 month period throughout the duration of the Contract beginning on an anniversary of the commencement date;
- "Delivery Address"** means the delivery address agreed in writing by the Seller;
- "Delivery Date"** means the delivery date agreed between the Parties or if no delivery date is agreed, then within a reasonable time from acceptance of the Purchase Order by the Seller in accordance with Clause 2.5;
- "Force Majeure Event"** means any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a Party including, but without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, unavailability or shortage of raw materials, failure or shortage of power supplies, traffic, road accident, delay of a third party carrier, breakdown of plant and/or machinery, war, military operations, riot, crowd disorder, strike, labour dispute, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority;
- "Goods"** means the goods detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2.5;
- "Intellectual Property Rights"** means any patents, trade marks, service marks, registered designs, database rights, applications for any of the foregoing, copyright, unregistered design rights know how and any other similar protected rights in any other country;
- "Party"** and **"Parties"** means the Seller or the Buyer or both the Seller and the Buyer (as is applicable);
- "Price"** means:-
 - (a) in relation to Goods, the price of the Goods agreed between the Seller and the Buyer; and
 - (b) in relation to Services, the price of the Services as notified by the Seller.
- "Purchase Order"** means the Buyer's written or oral purchase order;
- "Quantity Required"** means the quantity of Goods to be delivered by the Seller to the Buyer as set out in a Purchase Order accepted by the Seller under Clause 2.5 or otherwise agreed in writing between the Parties;
- "REACH"** means the Registration Evaluation Authorisation and Restriction of Chemicals Regulation 1907/2006 (as amended);
- "REACH Compliance"** means in relation to Goods, compliance with the requirements of REACH and "REACH Compliant" shall be construed accordingly;
- "Seller"** means **INEOS VINYLs UK LIMITED** (Company Number 00547640) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WAT 4JE;
- "Services"** means the services detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2.5;
- "Specification"** means the specification of the Goods and/or Services agreed in writing by the Parties from time to time.
- Any reference in these Conditions to:-
 - (a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
 - (b) a Clause is to a clause in these Conditions; and
 - (c) a person includes an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture (whether or not having a separate legal personality);
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.
- 2 BASIS OF SALE**
- 2.1 Any quotation (whether written or oral) is given on the basis that it is an invitation to treat only and no Contract will come into existence until the occurrence of one of the events set out in Clause 2.5.
- 2.2 Unless otherwise agreed in writing any quotation is valid only for a period of thirty (30) days from its date of issue provided that the Seller has not previously withdrawn it by written or oral notice to the Buyer and shall be subject to the availability of the Goods and/or resources available to perform the Services.
- 2.3 Each Purchase Order constitutes a separate offer by the Buyer to purchase the Goods and/or Services subject to these Conditions.
- 2.4 Each Purchase Order shall contain:-
 - (a) the Goods and/or Services required;
 - (b) the Specification;
 - (c) the Delivery Address (or confirmation that the Buyer will collect the Goods from the Seller);
 - (d) the quantity of Goods and/or Services it requires; and
 - (e) the date on which the Buyer would like the Goods to be delivered and/or the Services to be performed (such date not being binding on the Seller and being subject to Clause 5.1).
- 2.5 The Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:
 - (a) the issue by the Seller of an acknowledgement of the Purchase Order;
 - (b) notification by the Seller that the Goods are ready for delivery or that the Services can be performed; or
 - (c) delivery of the Goods and/or commencement of the performance of the Services (or any part of the Goods and/or Services) and such occurrence shall create a Contract.
- 2.6 Nothing in these Conditions shall oblige the Seller to accept a Purchase Order from the Buyer.
- 2.7 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a Purchase Order has been issued.
- 2.8 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in any sales literature, quotation, price list or acknowledgement of Purchase Order, the Seller shall contact the Buyer and such document shall be subject to correction without any liability on the part of the Seller.
- 2.9 Any Purchase Order which has been accepted by the Seller pursuant to Clause 2.5 may only be cancelled, postponed or varied by the Buyer with the prior consent of the Seller.
- 2.10 The Buyer represents, warrants and undertakes to the Seller that it shall promptly provide to the Seller such information as may reasonably be required from time to time in order to obtain and maintain REACH Compliance in respect of the Goods and it shall comply with its obligations under REACH.
- 3 BLANKET ORDERS**
- The following provisions shall apply where the Seller supplies the Goods under a blanket order received from the Buyer:
 - (a) if the blanket order is a scheduled Purchase Order where the maximum quantity of Goods required and the approximate dates (including the terminal date) on which the requirements will be called off are specified, the whole Purchase Order will be treated as a single Contract;
 - (b) if the blanket order is a non-scheduled Purchase Order where:
 - (i) the maximum quantity of Goods required is not specified; or
 - (ii) the maximum quantity of Goods specified is, in the opinion of the Seller, an unrealistic estimate of the Goods which are likely to be required by the Buyer; or
 - (iii) where the call off dates for the Goods are not specified;
 then each call off will be deemed to be a separate Contract.
- 4 SPECIFICATIONS, WARRANTIES AND REPRESENTATIONS**
- 4.1 The Seller warrants that:
 - (a) the Goods and/or Services sold to the Buyer shall comply with the Specification (unless agreed otherwise by the Parties in writing); and
 - (b) it shall use reasonable endeavours to obtain and maintain REACH Compliance in respect of the Goods or procure the same save where it is the Buyer's responsibility pursuant to REACH to obtain and/or procure REACH Compliance and the non-compliance is not caused by any act or omission of the Buyer.
- 4.2 Any suggestion or representation concerning any possible use of the Goods and/or Services made by the Seller in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Buyer (and its customers) to satisfy themselves fully as to the suitability of the Goods and/or Services for any particular purpose. No suggestion or representation relating to such possible use shall form part of the Contract.
- 4.3 The Buyer shall, within 2 Business Days of the delivery of the Goods and/or performance of the Services, notify the Seller in writing of any defect by reason of which the Buyer alleges that the

- Goods delivered and/or Services performed are not in accordance with the Specification and which should be apparent on reasonable inspection.
- 4.4 If the Buyer fails to give notice under Clause 4.3 then, except in respect of any defect that is not one which should be apparent on reasonable inspection, the Goods and/or Services shall be deemed conclusively to be in all respects in accordance with the Specification and accepted by the Buyer.
- 4.5 If within a period of 7 Business Days (or such later date as the Seller may agree to in writing) from the date of delivery of the Goods and/or performance of the Services any of the delivered Goods and/or performed Services are proved to the reasonable satisfaction of the Seller not to comply with the Specification due to defects in materials, workmanship or composition (other than a composition specified by the Buyer) the Seller at its option will:
 - (a) replace such Goods and/or re-perform such Services free of charge;
 - (b) refund the price of such Goods and/or Services; or
 - (c) agree a reduced fee for such Goods and/or Services.
- 4.6 The remedies set out in Section 4 of these Conditions shall be the sole and exclusive remedies of the Buyer in respect of any and all of non-conformance of the Goods and/or Services with the Specification and in lieu of all rights and remedies the Buyer may have.
- 4.7 The Seller's obligation under Clause 4.5 will not apply where:
 - (a) the Goods have been improperly altered in any way whatsoever, or have been subject to misuse;
 - (b) the Goods have been improperly used;
 - (c) the Goods have been mixed incorrectly with other products or mixed with incompatible products; any instructions as to storage of the Goods have not been complied with in all respects; or
 - (d) the Buyer has failed in accordance with Clause 4.3 to notify the Seller where the defect should be apparent on reasonable inspection, or within 2 Business Days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 7 Business Days (or such later date as the Seller may agree to in writing) from the date of delivery.
- 4.8 Any Goods that have been replaced will belong to the Seller. Any replacement Goods issued by the Seller will be liable to a replacement or refund under the terms specified in Clause 4.5.
- 4.9 Except as otherwise provided in these Conditions, all warranties, conditions and other terms implied by statute or common law including without limitation any warranty as to REACH Compliance of the Goods (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 Sale and Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 5 DELIVERY**
- 5.1 The Seller will use reasonable endeavours to deliver the Goods and/or Services in each of the Buyer's Purchase Orders it accepts by the Delivery Date, but the timing of delivery of the Goods and/or performance of the Services will not be of the essence in the Contract.
- 5.2 If, despite using reasonable endeavours, the Seller is unable for any reason to fulfil any delivery of the Goods and/or performance of Services by the Delivery Date, the Seller will be deemed not to be in breach of the Contract, nor will the Seller have any liability to the Buyer howsoever caused (including, but without limitation, as a result of negligence) for any delay in delivery or performance.
- 5.3 Delivery of the Goods shall be deemed to be made on the earliest occurrence of:-
 - (a) collection of the Goods by the Buyer or a third party carrier engaged by the Buyer from the Seller; or
 - (b) delivery of the Goods by the Seller to the Buyer at the Delivery Address.
- 5.4 The Buyer shall prepare the area for delivery of the Goods and/or performance of the Services with free access to such place and with free access to any services or facilities that may be required by the Seller to facilitate the delivery of the Goods and/or performance of the Services. Prior to delivery of the Goods and/or commencement of performance of the Services the Seller may request and the Buyer shall grant access to such place for an inspection. If following such inspection such place is not suitable for the delivery of the Goods and/or performance of the Services in the opinion of the Seller the Buyer shall do all such acts and things as the Seller may request to ensure such place becomes suitable and the Seller shall be without any liability towards the Buyer for non delivery of the Goods and/or non performance of the Services until such place is in the opinion of the Seller suitable for the delivery of the Goods and/or performance of the Services.
- 5.5 The Seller reserves the right to deliver the Goods and/or perform the Services in instalments and to invoice in instalments and in such event each instalment shall be treated as a separate Contract.
- 5.6 If the Buyer refuses or fails to take delivery of any of the Goods at the time stated for delivery (otherwise than by reason of any Force Majeure Event or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:
 - (a) store the Goods at any location, including without limitation at the Buyer's premises, until actual delivery and charge the Buyer for the cost of storage, transport any related insurance and a handling fee; and/or
 - (b) sell the Goods at the best prices obtainable in all the circumstances and after deducting all storage, insurance, transport and selling expenses, invoice the Buyer for the difference between the sum obtained by the Seller (less deductions) and the Price and the Buyer shall pay such sum immediately.
- 5.7 The Seller may deliver to the Buyer an excess or deficiency of up to 10% of the Quantity Required and:
 - (a) the Buyer shall pay for the actual weight delivered; and
 - (b) the Seller shall not be in breach of the Contract.
- 6 PACKAGES**
- 6.1 Where the Buyer has an option to return packages and does so, the Buyer must return such packages empty in good order and condition (consigned "carriage paid" unless otherwise notified by the Buyer and agreed by the Seller) from the point of delivery to the location requested by the Seller, and must advise the Seller on the date of despatch.
- 6.2 Where packages are stated to be the Seller's property, they shall remain the property of the Seller at all times and the Buyer must return them empty (consigned "Carriage forward" unless otherwise agreed by the Seller) from the point of delivery to the location indicated by the Seller and must advise the Seller on the date of despatch. Any packages not returned in good order and condition within a reasonable period shall be paid for by the Buyer at the Seller's standard rate operating at the date of settlement by the Buyer for the lost or damaged packages unless failure to return is due to any cause for which the Seller accepts responsibility under these Conditions.
- 6.3 Loss of or damage to packages stated to be the Seller's property occurring:
 - (a) prior to the point of delivery shall be for the Seller's account provided notice has been given in accordance with this Clause 6;
 - (b) subsequent to their being placed empty for return at the point of delivery shall be for the Seller's account provided advice at the time of despatch has been given to the Seller; and
 - (c) in the interval shall be the Buyer's responsibility where the Seller can show fault on the part of the Buyer.
- 7 LIMITATION OF LIABILITY**
- 7.1 The Seller does not attempt to exclude any liability:
 - (a) for breach of the Seller's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
 - (b) for personal injury or death resulting from the Seller's negligence;
 - (c) under section 2(3) Consumer Protection Act 1987;
 - (d) for its fraudulent misrepresentation; or
 - (e) for any matter for which the Seller may not exclude or to attempt to exclude its liability under applicable law.
- 7.2 Subject to Clauses 7.1 and 23.3, the Seller shall not be liable to the Buyer whether in contract, tort (including, without limitation, negligence) misrepresentation or otherwise howsoever arising for any loss of profit, loss of anticipated profit, loss of business, loss of contract, overhead recovery, anticipated savings, loss of data, loss of production, depletion of goodwill, product recall, nor for any special, indirect or consequential loss or damage, or otherwise for any costs, expenses or claims for consequential compensation whatsoever.
- 7.3 Subject to Clauses 7.1, 7.4 and 23.3 the Seller's total liability in respect of each delivery, non-delivery, late delivery or mis-delivery of Goods, under or in connection with the Contract whether such liability arises in contract, tort (including, without limitation, negligence) misrepresentation or otherwise is limited to an amount equal to 120% of the amounts paid or payable by the Buyer to the Seller for those Goods (excluding VAT).
- 7.4 Subject to Clauses 7.1, 7.3 and 23.3 the Seller's total aggregate liability in respect of all claims arising in a Contract Year under or in connection with the Contract whether such liability arises in contract, tort (including, without limitation, negligence) misrepresentation or otherwise is limited to the lesser of:
 - (a) the aggregate amounts paid or payable under the Contract for Goods and/or Services by the Buyer during that Contract Year subject to a minimum of £100,000; or
 - (b) £5 million.
- 8 PRICES AND PAYMENT**
- 8.1 The Price is exclusive of all taxes and duties including, but without limitation, value added tax, which, if applicable, shall be payable by the Buyer in addition to any additional delivery costs as detailed in any quotation issued by the Seller to the Buyer.
- 8.2 The Buyer shall pay the Price (including value added tax or any other applicable tax or duty together with any items specified in Clause 8.1) by the date specified in the acknowledgement of the Purchase Order, or if no date is stipulated or no acknowledgement of Purchase Order is issued, by the last Business Day falling on or before the 20th day of the month following the month in which

- the Goods were despatched and/or Services were performed. Payment shall be made via Direct Debit, BACS or CHAPS.
- 8.3 If any sum payable under the Contract is not paid when due then without prejudice to the Seller's other rights under these Conditions, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 8% per annum over HSBK Bank Plc base rate from time to time and the Seller will be entitled to suspend all future deliveries of the Goods and/or performance of the Services until the outstanding amount has been received.
- 8.4 No payment will be deemed to have been received until the Seller has received the Price in full in cleared funds.
- 8.5 Time for payment will be of the essence under the Contract and the Buyer will indemnify the Seller against all expenses and legal costs incurred by the Seller in recovering overdue amounts.
- 8.6 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.
- 8.7 The Buyer will make all payments under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.8 Without prejudice to Clause 8.7, if the Buyer fails, or the Seller reasonably believes that the Buyer will fail, to pay the Price when due the Seller may demand payment of all sums due, treat the Contract as repudiated by the Buyer and/or suspend all future performance of the Contract until all overdue sums have been paid.
- 8.9 The Seller shall be entitled to set off and retain any and all sums due to the Buyer against any contingent or actual liabilities of the Buyer to the Seller.
- 8.10 The Seller reserves the right to increase the Price if any extra cost is incurred by the Seller after quoting the Price as a result of the inaccuracy or incompleteness of any instructions issued by the Buyer, or as a result of any failure to supply any information, drawings or specification required to enable the Seller to proceed with the Contract.
- 9 RISK AND PROPERTY**
- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
- (a) In the case of Goods to be collected from the premises of the Seller, at a time when the Seller passes the Goods to the Buyer or a third party carrier engaged by the Buyer; or
- (b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price payable for the Goods.
- 9.3 Until ownership of the Goods has passed to the Buyer pursuant to Clause 9.2, the Buyer will:
- (a) hold the Goods on a fiduciary basis as trustee of the Seller;
- (b) keep the Goods free from any charge, lien or other encumbrance;
- (c) not destroy, deface or obscure any identifying mark on the Goods or their packaging;
- (d) maintain the Goods in a satisfactory condition;
- (e) insure the Goods for the Price in full on behalf of the Seller against all usual risks to the reasonable satisfaction of the Seller; and
- (f) hold all proceeds of the insurance policy referred to in Clause 9.3(e) if any claim is made on an overdraft bank account.
- 9.4 Notwithstanding the provisions of Clause 9.3, the Buyer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Buyer's business and will be a sale, use or disposition of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal. The Seller shall, by reason of the relationship between the Buyer (as trustee) and of the Seller (as beneficiary) and be remain legally entitled to the proceeds of sale and the Buyer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all of the proceeds of the sale are kept by or on behalf of the Buyer in a separate and identifiable form and not paid into an overdraft bank account. Upon receipt of the proceeds of sale, the Buyer shall discharge its debt to the Seller and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.
- 9.5 Until ownership in the Goods has passed pursuant to Clause 9.2, the Seller may recover the Goods at any time, and the Buyer grants to the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored. In the case of the Goods being stored on premises owned by a third party the Buyer shall procure such a right for the Seller.
- 9.6 The Buyer's right to possession of the Goods shall cease on the occurrence of any of the events set out in Clause 11 which would permit the Seller to terminate this Contract. In such circumstances, the Seller may upon notice enter any premises occupied by the Buyer where the Goods are stored and repossess the Goods and the Buyer shall procure a right for the Seller to enter any premises not occupied or owned by the Buyer.
- 10 EVENTS BEYOND THE CONTROL OF THE PARTIES**
- 10.1 If either Party is prevented or delayed in the performance of any of its obligations by a Force Majeure Event then the Party so prevented or delayed will be excused from the performance of its obligations from the date of the occurrence of such Force Majeure Event for so long as such Force Majeure Event continues and shall not be deemed to be in breach of these Conditions or the Contract or otherwise liable to the other Party in any manner whatsoever.
- 10.2 On the occurrence of any Force Majeure Event, the Parties shall enter into bona fide discussions with a view to alleviating its effects and the Party prevented from performance by it shall use reasonable diligence to remove the cause of the Force Majeure Event (if capable of removal) and to enable its obligations hereunder to be performed. If any Force Majeure Event prevails for a continuous period in excess of 1 month, the Party not affected by the Force Majeure Event may give notice to terminate the Contract forthwith provided that the Parties have not previously agreed a course of action to deal with such Force Majeure Event. If such agreed course of action fails, the Party not affected by the Force Majeure Event may give notice to terminate the Contract forthwith provided the Force Majeure Event has already prevailed for a period of 1 month.
- 10.3 If at any time the Seller claims the existence of a Force Majeure Event in respect of its obligations under these Conditions or the Contract with regard to the supply of the Goods and/or Services, the Seller shall be entitled to allocate its product resources as in its reasonable discretion shall decide and the Buyer shall be entitled to obtain from any other person such quantity of the Goods and/or Services as the Seller is unable to supply.
- 10.4 The Seller reserves the right upon notice to the Buyer at least 14 days before the Delivery Date to vary the price of the Goods and/or Services to compensate for any significant increase which has arisen in the cost to the Seller of manufacturing or acquiring or delivering the Goods and/or Services. Upon receiving such notice the Buyer shall be entitled to cancel the Purchase Order relating to the Goods and/or Services providing it serves notice to the Seller of cancellation within 7 days of its receipt of the Seller's notice.
- 11 BUYER'S DEFAULT AND TERMINATION OF THE CONTRACT**
- 11.1 Either Party shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:
- (a) the other Party being in material breach of any term of these Conditions and such breach not being capable of remedy;
- (b) the other Party being in material breach of any term of these Conditions and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) the other Party (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the other Party enters into any informal or voluntary arrangement or order or in accordance with the Insolvency Act 1986 with or for the benefit of the general body of creditors of the individual, the partnership or the body corporate; or
- (d) the other Party suffering the equivalent of any similar or analogous event in (c) (above) in any jurisdiction.
- 11.2 Without prejudice to any of its other rights or remedies, the Seller shall have the right to terminate the Contract without any liability to the Buyer:
- (a) immediately upon written notice, if in the reasonable opinion of the Seller after an inspection into the Buyer's financial or trade status or in light of any report considered by the Seller, the Seller at its absolute sole discretion deems that the Buyer may not be able to pay the Price; or
- (b) immediately upon written notice, if the Seller receives written notice from any competent authority, or in its reasonable opinion decides, that any of the Goods are not or will not become REACH Compliant; or
- (c) upon 3 months prior written notice, if the plant which has been used by the Seller to produce the majority of Goods sold to the Buyer in the preceding 12 month period (or shorter if less than 12 months has passed since the commencement of the Contract) is either shut-down or is in the process of being shut-down.
- 12 CONFIDENTIALITY**
- Each Party hereby undertakes not at any time to divulge any of the terms of the Contract or use any information in relation to the other Party's business or any other information received from the other Party in relation to the Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Seller can divulge such information to any party to whom it assigns or transfers all or part of this Contract.
- 13 OWNERSHIP OF INTELLECTUAL PROPERTY**
- 13.1 The ownership of and sole rights to obtain the ownership of all Intellectual Property Rights relating to the Goods and/or the Services shall at all times be vested in the Seller and the Seller shall be
- responsible for the registration and other protection of such Intellectual Property Rights in the Goods and/or Services as the Seller deems fit.
- 13.2 The Buyer shall not use the Seller's name, logo or any other identification marks for the purpose of advertising or publicity without the prior written consent of the Seller.
- 13.3 If the Goods have been manufactured to the specification or design of the Buyer, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any infringement of any Intellectual Property Rights of any third party where such liability arises as a consequence of the specification or a modification of the specification supplied by the Buyer.
- 14 INDEMNITY**
- Without prejudice to any rights or remedies implied by statute or common law or under any provision of these Conditions or the Contract, the Buyer shall indemnify the Seller and keep the Seller indemnified in full against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any and all acts and omissions of the Buyer, its employees, agents or sub-contractors relating to the use, misuse, marketing, advertising and sale of the Goods and/or Services.
- 15 HEALTH AND SAFETY**
- Goods supplied by the Seller to its own specification or design are designed to be safe and without risk to health provided they are used strictly in accordance with any instructions or information issued by the Seller as to their use and are also used with any necessary safety precautions. If the Buyer is unclear as to the correct use of the Goods it should immediately contact the Seller for clarification. It is the responsibility of the Buyer to meet all safety standards in the application, use and sale of the Goods.
- 16 COSTS AND EXPENSES**
- Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of each Contract.
- 17 RELATIONSHIP OF PARTIES**
- Nothing in these Conditions or any document referred to in either document or any arrangement contemplated by the Parties shall be construed as creating a partnership between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on or behalf of any third party.
- 18 AMENDMENTS AND VARIATIONS**
- No variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.
- 19 WAIVERS**
- No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.
- 20 ASSIGNMENT**
- 20.1 The Seller shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract or these Conditions through any Affiliate and any act or omission of such Affiliate shall for the purposes of the Contract be deemed to be an act or omission of the Seller.
- 20.2 The Seller shall be entitled to carry out its obligations under the Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 20.3 The Seller may at any time assign or transfer (in whole or in part) any of its rights and/or obligations under the Contract or these Conditions, including, without limitation, pursuant to any receivables purchase arrangements or similar transactions which the Seller may from time to time enter into. The Buyer may not assign, sub-contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Contract or these Conditions without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).
- 20.4 If required to do so to give legal effect to any permitted assignment pursuant to the provisions of Clause 20.3, the Parties shall enter into a novation agreement and shall use all reasonable endeavours to procure that the assignee or transferee enters into such novation agreement.
- 21 SEVERABILITY**
- If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect.
- 22 DISPUTE RESOLUTION**
- 22.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to these Conditions or the Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiation between appropriate representatives of the Parties, the dispute shall be dealt with using the escalation procedure set out in this Clause 22.
- 22.2 The dispute shall be referred by either Party to the chief executives of each of the Parties and they or their nominees shall meet in good faith in order to try and resolve the dispute. If the dispute or difference is not resolved as a result of such meeting either Party may (at such meeting or within 14 calendar days of its conclusion or after the expiry of 28 days following the date of referral to the chief executives) commence proceedings in accordance with Clause 26.
- 23 ENTIRE AGREEMENT**
- 23.1 These Conditions and the acknowledgement of Purchase Orders represent the entire agreement between the Parties relating to the sale and purchase of Goods and/or Services and supersede all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods and/or Services.
- 23.2 Each Party acknowledges that in entering into the Contract it places no reliance on any representation, warranty or other statement relating to the subject matter of the Contract, other than as expressly set out in these Conditions and any acknowledgement of the applicable Purchase Order.
- 23.3 Neither Party shall have any liability or remedy in respect of any representation warranty or other statement being false, inaccurate and/or incomplete unless it was made fraudulently or is contained in these Conditions. Nothing in these Conditions shall exclude or limit the liability of either Party for a fraudulent misrepresentation.
- 23.4 Each Party agrees that its only remedy for breach of the Contract shall be for breach of contract.
- 23.5 If these Conditions are translated into any language other than English, the English language text shall prevail.
- 24 NOTICES**
- 24.1 Notices under these Conditions may be served by personal delivery, by first class post or by facsimile.
- 24.2 Notices shall be deemed to be served
- (a) on delivery when delivered personally; or
- (b) on receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party; or
- (c) two (2) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.
- 25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- An entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Contract.
- 26 GOVERNING LAW**
- These Conditions and the Contract shall be governed by English law and subject to the provisions of Clause 22 the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts, save that the Seller may elect to bring proceedings in the country where the Buyer is incorporated.