



## GENERAL SALES CONDITIONS OXERRA EUROPE NV

### 1. DEFINITIONS

- 1.1 **"Affiliate"** means an entity under common Control with Oxerra;
- 1.2 **"Annual Sales Value"**: the total price paid or payable in respect of all Products actually supplied by Seller to Buyer in a Contract Year (net of taxes and duties and all costs or charges in relation to loading, unloading, freight, carriage and insurance);
- 1.3 **"Bribe" and "Bribery"**: any payment or transfer of value or any other payment commonly held to be improper, and/or any act that would breach the US Foreign Corrupt Practices Act, the UK Bribery Act or any equivalent legislation of any OECD member state or other country;
- 1.4 **"Business Day"**: a day (other than a Saturday, Sunday or public holiday);
- 1.5 **"Buyer"**: the entity so described (a) in the Sales Agreement; or (b) (if there is no Sales Agreement) in the Seller's invoice;
- 1.6 **"Conditions"**: these terms and conditions of sale;
- 1.7 **"Contract Year"**: a year commencing on (a) the effective date of the Sales Agreement; or (b) (if there is no Sales Agreement) the first date in the calendar year in which the Seller's invoice is issued on which the Seller supplies Products to the Buyer; and in each case ending on the first anniversary thereof.
- 1.8 **"Contract"**: the agreement together set out in the Conditions, the Specifications, and any applicable Sales Agreement;
- 1.9 **"Control"**: the ability to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise;
- 1.10 **"Corrective Action"**: any measure that may be deemed appropriate by Seller (a) to avoid any potential damage that could be caused by Products, (b) to avoid any failure to comply with the applicable legislation or (c) otherwise in accordance with Seller's corporate policies including but not limited to Product recall;
- 1.11 **"Data Protection Legislation"**: (a) the EC Data Protection Regulation ((EU) 2016/679) or any implementing or related legislation in any member state of the European Economic Area; (b) the EC Directive on Privacy and Electronic Communications (Directive 2002/58/EC) or any implementing or related legislation in any member state in the European Economic Area; and (c) all other applicable laws and regulations in any jurisdiction relating to or impacting on the processing of Personal Data, all as may be amended and supplemented from time to time;
- 1.12 **"Effective Date"**: (a) the date on which the Sales Agreement takes effect; or (b) (if there is no Sales Agreement) the date on which the Seller accepts the Buyer's offer (whether expressly or by conduct);
- 1.13 **"Estimated Quantity"**: Buyer's best estimate specified by tonnage, grade and packaging type of its requirements for the Products during any month or three month period as the case may be;
- 1.14 **"Force Majeure"**: any cause beyond the reasonable control of the party affected which prevents that party from performing its obligations under the Contract, including without



limitation acts of God, flood, fire, accident, explosion, strikes, lock outs, government action, war, terrorism, riots, rebellion, extreme weather conditions, difficulties in obtaining raw materials, fuel, parts or machinery, power failure or breakdown in machinery or any such event that may affect its suppliers;

1.15 **"Medical Applications"**: any device that is intended to have contact with or store human tissue, blood or other bodily fluids; any implanted device; or any device that supports or sustains human life;

1.16 **"Order"**: the Buyer's order for the Products and/or Services, as set out in the Buyer's purchase order form, the Buyer's written acceptance of the Seller's quotation, or overleaf, as the case may be;

1.17 **"Order Confirmation"**: the Seller's binding confirmation of Buyer's order or Buyer's written acceptance of the Seller's quotation, as the case may be;

1.18 **"Personal Data" & "process Personal Data"**: shall have the meaning given to those terms by the Data Protection Legislation;

1.19 **"Pharmaceutical Application"**: any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting, or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis;

1.20 **"Price"**: the price of the Products;

1.21 **"Products"**: any "Product(s)" specified in the Sales Agreement (or, if there is no Sales Agreement, specified in the Seller's invoice) and any other item whatsoever sold by Seller pursuant to the Contract;

1.22 **"Quantity"**: the quantity of Products to be purchased by Buyer from Seller;

1.23 **"Sales Agreement"**: a document in force for the time being that is labelled "Sales Agreement", which includes the name and address of Buyer and other commercial terms, and which has been executed by a representative of the Seller having authority to do so;

1.24 **"Seller"**: the entity so described (a) in the Sales Agreement; or (b) (if there is no Sales Agreement) in the Seller's invoice;

1.25 **"Services"**: any technical support, advisory, consultancy or other services (whether provided in writing or orally) provided by or on behalf of Seller in connection with the Contract; 2

1.26 **"Specifications"**: the specification(s) for the Products agreed between the parties from time to time, or (if not agreed) as available from the Seller on request.

1.27 **"Specification document"** a statement of work quotation or other similar document describing the goods and services to be provided by the Seller

## 2. APPLICATION OF CONDITIONS

2.1 The Contract is the entire contract between Buyer and Seller for the sale of the Products and the provision of Services and supersedes all previous and contemporaneous conditions,



understandings, commitments or agreements between the parties. Further, save for any unqualified statements made in writing and contained in Seller's published technical literature used for promotional purposes, the parties agree that no statements or representations, whether oral or written, express or implied, made by either party have been relied on by the other in agreeing to enter into the Contract or any supply of Products made thereunder. All purchases and sales of Products and Services between Buyer and Seller shall be governed by the Contract exclusively. Accordingly, no different sales conditions referred to or stated in the Seller's transaction documents, nor any sales conditions whatsoever stated or mentioned in Buyer's transaction documents, shall apply. Any terms or conditions which Buyer purports to apply to the Contract under any purchase order, specification or other document will be of no legal force and effect and will not be binding on Seller unless expressly accepted by Seller in writing. No variation of these Conditions whether express or implied will be effective unless agreed in writing by Seller. Without prejudice to the foregoing, unless accepted earlier (whether expressly or by conduct), an order placed by Buyer will be deemed to be accepted by Seller when the Seller dispatches the Products from its facility.

### **3. PRODUCTS AND QUANTITY**

3.1 If there is no Sales Agreement, the Seller agrees to sell and the Buyer agrees to buy the Quantity of Products set out in the Order Confirmation or in the absence of an Order Confirmation in the Seller's invoice.

3.2 If there is a Sales Agreement:

(a) During each Contract Year, Seller agrees to supply and Buyer agrees to purchase the Products specified in the Sales Agreement. The initial Quantity is as specified in the Sales Agreement, but is an estimate only and is not binding on either the Seller or the Buyer.

(b) Buyer and Seller each agree to use their respective reasonable endeavours to agree the Quantity to be purchased by Buyer during the following Contract Year no later than three months before the start of that Contract Year. If Buyer and Seller fail to agree the Quantity prior to the commencement of a Contract Year, the Quantity for the preceding Contract Year will apply. If the Contract is terminated part way through a Contract Year, the Quantity will be reduced pro rata; and

(c) Before the start of each month, Buyer will provide in writing the Estimated Quantity for the following three months for Seller's agreement. If Seller does not agree the Estimated Quantity, Buyer and Seller will use their respective reasonable endeavours to agree a revised Estimated Quantity. Buyer will take delivery of the Products in approximately equal monthly quantities, and Buyer's actual off take for each month will be within plus or minus 10% of the most recent agreed Estimated Quantity for that month.

### **4. PACKAGING**



4.1 Products will be delivered prepacked in bags or containers on pallets either in Seller's standard bags, containers or other receptacles, or, in the case of non-titanium dioxide products, in bulk or semi-bulk. Such pallets, containers or other means of storage will remain at all times the property of Seller and must be made available for collection by or on behalf of Seller at Buyer's premises clean and in good condition. In the event that Seller is unable to reclaim these from Buyer's premises, Seller shall be entitled to reclaim from Buyer its costs incurred in replacing them.

## 5. PRICE AND PAYMENT

5.1 If there is no Sales Agreement, the Price is as set out in the Order Confirmation or in the absence of an Order Confirmation in the Seller's invoice.

5.2 If there is a Sales Agreement, the initial Price is as set out in the Sales Agreement. Seller may vary the Price at any time and accordingly Seller will provide Buyer with (a) up-to-date price lists for all the Products from time to time, (b) not less than thirty (30) days' notice in writing of any price lists changes and that such changes will apply to all Products delivered on and after the applicable date of the changes in such price lists including outstanding Orders.

5.3 Unless otherwise agreed in writing, all prices are exclusive of import duty, VAT (charged at the rate prevailing on the date of delivery) or equivalent local taxes and all costs or charges in relation to loading, unloading, freight, carriage and insurance (all of which amounts Buyer agrees to pay at the time it pays for the Products) and demurrage attributable to the act or omission of Buyer or its agents, if any. Such demurrage must be paid by Buyer to Seller (or as Seller may direct) on written demand.

5.4 Unless otherwise agreed in writing, payment for Products delivered must be received by Seller in full no later than the day that is 30 calendar days after the date of the invoice for such Products, or on demand, where Products are supplied for export. Subject only to the provisions of Clause 5.10, no payment will be deemed to have been received until Seller has received the amount due in full in cleared funds in the currency specified in the invoice(s) for the Products. Notwithstanding any other provision of the Contract, all payments payable to Seller under the Contract will become due immediately upon termination of the Contract. 3

5.5 The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment in full at the then applicable annual rate set by the law of 2 August 2002 on late payments in commercial transactions. Additionally, upon late payment an indemnity of 10% of the invoice amount will be due, with a minimum of 100 EUR. In the event that the Buyer's procedures require that an invoice be submitted against a purchase order to payment, the Buyer shall be responsible for issuing such purchase order before the goods and services are supplied.

5.6 The Contract is negotiated on open payment terms. However, Seller reserves the right to amend these open payment terms if (a) the credit quality of Buyer materially changes; or (b)



economic conditions materially change. Seller reserves the right to require payment in advance.

5.7 Buyer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount or otherwise.

5.8 If Buyer or any entity within the same group of companies as Buyer is in default of any payment obligations to Seller or any entity within the same group of companies as Seller, with respect to Products or Services supplied under the Contract then Seller may, in its absolute discretion, suspend any discount or other non-standard arrangements it has with Buyer until payment has been received.

5.9 During each Contract Year, Buyer shall provide to Seller on a yearly basis a copy of its published annual accounts on the date of publication or as soon as reasonably practicable thereafter. Where Buyer is not required to publish its accounts, it will provide to Seller on a yearly basis a copy of its annual profit and loss statement and balance sheet signed by a director or duly authorised officer and Buyer's accountant. The profit and loss statement and balance sheet must be received by Seller no later than six months from the date of Buyer's financial year end. For the avoidance of doubt, this shall mean that if the accounts have been prepared to include information up to and including, for example, 31 December, the accounts must be received by 30 June in the following year.

5.10 This clause 5.10 applies only where the Price is to be paid in Euro. If a state which on 1 January 2012 used the Euro as its currency ("Eurozone State") ceases to use the Euro as its currency ("leaves the Euro") the Seller shall have the option to convert all references to the Euro in the Contract and/or any sum due thereunder in US dollars. The Seller may exercise its option during the period commencing on the date on which a Eurozone State leaves the Euro (the "Exit Date") and ending 90 days after the Exit Date. The Seller may exercise its option in respect of the Contract and/or any sum which has not then been paid (including, but not limited to, any interest due on any sum which has been paid). This option exists severally in respect of each Eurozone State, may be exercised by the Seller in its absolute discretion, and is subject only to it promptly sending notice to the Buyer that this Contract or any relevant sum has been converted. If the Seller exercises its option, conversion shall be deemed to have occurred: (a) on the day immediately prior to the relevant Exit Date, or, if earlier, the day immediately prior to the first day on which the relevant Eurozone State imposes controls on the movement of capital or payments ("the Conversion Date"); and (b) at the exchange rate of US dollars to Euros on the Conversion Date as set out in the H.10 weekly release published by the Board of Governors of the United States Federal Reserve System which covers the Conversion Date. This clause is not intended by the parties, and shall not be interpreted so as, to give effect to the principle of *lex monatae* or so as to otherwise alter in any way the choice of law and jurisdiction set out elsewhere in the Contract.

## **6. USE, RESALE, DISPOSAL ETC OF THE PRODUCTS**



6.1 Buyer is responsible for obtaining any necessary licences or consents of any government or other authority, in respect of the Products. Buyer will not be entitled to withhold or delay payment of the price due to its failure to obtain such licences or consents.

6.2 Buyer acknowledges that, unless the Seller's current published technical literature states otherwise, it must not use, resell, distribute, transfer, or otherwise dispose of the Products in:

- (a) any application or process in which lead stabilisers or lead stabilised systems are used where the end product is rigid pvc; or
- (b) any food application; or
- (c) any cosmetic application; or
- (d) any Pharmaceutical Application; or
- (e) any Medical Application.

Notwithstanding the above any and all sales of Products for use in Medical Applications must be expressly pre-approved in writing between Seller and Buyer in Seller's standard form.

6.3 Notwithstanding the foregoing Buyer agrees and acknowledges that:

- (a) Seller does not warrant any Products are fit for any particular purpose;
- (b) it must test the Products to establish suitability prior to use;
- (c) it does not rely on Seller's skill or judgment that the Products will be fit for any purpose for which they are to be used.

6.4 Buyer acknowledges that it must comply with all applicable export control and trade embargo laws, rules and regulations, relating to the Products and any Services and agrees not, either directly or indirectly, to resell, export, re-export, distribute, transfer or otherwise dispose of the Products, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. 4

Buyer will not sell or deliver the Products and any Services to any countries, entities or individuals to which the United States Government, the EU or any other relevant governmental authority prohibits such sale or delivery.

## **7. DELIVERY, RISK AND OWNERSHIP**

7.1 Save as provided in Clause 7.2, Incoterms 2020 will apply to all Products supplied under this Contract. Unless the Sales Agreement (or in the absence of the Sales Agreement, the Order Confirmation or in the absence of an Order Confirmation, in the Seller's invoice) state otherwise, Products are supplied FCA the Seller's premises.

7.2 Legal title to Products will pass from the Seller to the Buyer only after actual receipt by Oxerra of full payment of the concerned invoices, including interest and indemnities. Notwithstanding this retention of title and anything to the contrary (by reference to Incoterms or otherwise), risk in Products will pass from the Seller to the Buyer when Products leave the Seller's facility (or that of its agents).



7.3 Deliveries will be made as set out in the Sales Agreement or (if there is no Sales Agreement) the Order Confirmation or in the absence of an Order Confirmation, in the Seller's invoice. Any time or date specified for delivery is an estimate only. In the event of any failure to meet any time or date specified for delivery (or to deliver within a reasonable time thereof), Buyer will not be entitled to terminate the Contract. Seller reserves the right to fulfil the Contract by delivering the Products in instalments and to tender a separate invoice in respect of each instalment.

7.4 Save in the case of the negligence of Seller, Seller accepts no responsibility for any errors which take place during the delivery or unloading of Products and in particular it will be solely Buyer's responsibility to ensure that Products are discharged into the correct tanker or storage facility. Seller will be entitled to rely on any oral or written instructions or directions given by or on behalf of Buyer without the need for any further inquiry.

7.5 Buyer agrees to pay for the quantity of Products actually delivered. Any surplus or shortfall in the agreed quantity of Products to be delivered will not give Buyer any right to reject the Products by reason only of any such surplus or shortfall.

7.6 If the Products are delivered to premises owned or occupied by Buyer or its agents, Buyer will provide or procure the provision of:

- (a) a place where the Products can be unloaded safely; and
- (b) any mechanical handling equipment, storage facility and manpower necessary for the immediate safe unloading, handling and discharge of the Products;

7.7 If Clause 7.6 is not complied with, Seller may withhold delivery. Seller may at its sole discretion and upon reasonable notice attend Buyer's premises (or those of its agents, whose consent Buyer will procure) to carry out periodic audits to establish whether or not Buyer or its agents are in compliance with these provisions.

7.8 To enable Seller to make a claim against its carrier, Buyer will inform Seller in writing of:

- (a) any Products damaged in transit or any short or incorrect delivery or partial loss of Products within 3 Business Days of delivery. Buyer will record such damage or loss on the carrier's copy of the consignment note; and
- (b) non-delivery of a consignment of Products within 3 Business Days of receipt of the invoice for the consignment.

7.9 If Seller agrees in writing to sell to Buyer Products on a consignment basis, Buyer shall bear all risk of loss or damage to all Products in its possession or control notwithstanding any event of Force Majeure. Buyer shall: (a) properly store consigned Products separately from any other property and maintain such Products, (b) prominently mark consigned Goods as the "Property of Oxerra Europe NV", and (c) adequately insure consigned Products against loss or damage. Seller shall have the right to enter your premises at all reasonable times to inspect consigned Products and your records relating thereto. If requested by Seller, Buyer shall assign to Seller any rights Buyer may have against third parties, including his insurers, for loss or damage to the Products. Upon termination of the consignment, Seller will collect consigned Products from Buyer.



## 8. QUALITY AND LIMITATIONS AND EXCLUSIONS OF LIABILITY

8.1 Seller warrants that the Products supplied will conform to the Specifications for such Products.

8.2 The Parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of Products and/or Services to be provided under this Contract shall be set out in the Specification Document, which shall reflect the changed Products and/or Services and price and any other terms agreed between the Parties. The Buyer may at any time request alterations to the Specification Document by notice in writing to the Seller. On receipt of the request for alterations the Seller shall, within 10 working days or such other period as may be agreed between the Parties, advise the Buyer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the Parties. Where the Seller gives written notice to the Buyer agreeing to perform any alterations on terms different to those already agreed between the Parties, the Buyer shall, within 10 working days of receipt of such notice or such other period as may be agreed between the Parties, advise the Seller by notice in writing whether or not it wishes the alterations to proceed. Where the Seller gives written notice to the Buyer agreeing to perform alterations on terms different to those already agreed between the Parties, and the Buyer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Seller shall perform this Contract upon the basis of such amended terms.

8.3 The warranty given in Clause 8.1 is the only warranty given by Seller in respect of the quality, description or fitness for purpose of the Products and all other warranties, conditions or other terms whether express or implied by statute, 5

common law, trade usage or otherwise and whether written or oral are, to the fullest extent permitted by law, excluded from the Contract.

8.4 If any of the Products supplied fail to comply with the warranty given in Clause 8.1, Seller will either:

(a) if the Products have not been used other than for the purpose of taking samples, take them back and either replace them with Products which do comply with the warranty given in Clause 8.1 or, at Seller's option, refund to Buyer the price paid and delivery costs incurred in respect of such Products; or

(b) if the Products have been used, make restitution for the loss or damage arising directly from such alleged defect in the Products up to a maximum amount of the invoice value of the Products in question provided that Buyer by acting reasonably diligently could not have ascertained that the Products did not comply with the warranty given in Clause 8.1 before using them.

This clause 8.4 sets out the entire liability of Seller in respect of any breach of the warranty given in Clause 8.1.





8.5 In order to claim the benefit of Clause 8.4, Buyer must:

(a) inform Seller in writing (otherwise than on a consignment note) of the alleged defect within 60 Business Days of receipt of the Products in the case of a claim to be made under Clause 8.4(a) above or within the earlier of 30 Business Days from the date of discovery of the alleged defect and two years from the date of delivery of the Products in question in the case of a claim to be made under Clause 8.4(b) above; and

(b) where possible, retain and allow Seller to take samples of all material which may be relevant to the investigation of the complaint including without limitation the Products complained of and any intermediate and/or final products into which such Products have been incorporated.

8.6 Seller shall have at its sole and absolute discretion the right to carry out at any time any Corrective Action it may deem appropriate in relation to any of its Products. Buyer shall assist Seller for the purpose of carrying out any Corrective Actions, including but not limited to recalling from the retail or wholesale market any quantities of any batches of the Products or any of them or any intermediate and/or final products into which such Products have been incorporated. The Buyer undertakes to maintain appropriate, up-to-date and accurate records to assist any Corrective Actions. The terms of clause 8.4 shall apply to Corrective Action carried out by the Seller.

8.7 Without prejudice to Clause 8.4, and subject always to Clauses 8.3, 8.5, 8.8, and 8.9, Seller's total liability howsoever arising in respect of any and all Products supplied under the Contract, whether in contract, delict, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract including the provision of Services, if any, will be limited to two and a half times the invoice value (net of taxes and duties and all costs or charges in relation to loading, unloading, freight, carriage and insurance) of the delivery or deliveries of the Products or that part thereof in respect of which complaint is made provided always that Seller's total such liability in respect of all Products and Services supplied in each Contract Year shall not, in any event or circumstance, exceed ten per cent of the Annual Sales Value for that Contract Year. Buyer accepts that the limitations and exclusions set out in these Conditions are reasonable having regard to all the circumstances including without limitation the price to be paid by Buyer.

8.8 Despite any other provisions of the Contract, in no circumstances will Seller be liable to Buyer for any indirect or consequential loss or damage, for direct or indirect loss of profit, loss of business, or depletion of goodwill, or for costs, expenses or other claims for compensation whatsoever (howsoever caused including negligence) which arises out of or in connection with the Contract including the provision of Services, if any.

8.9 Nothing in the Contract shall exclude or limit Seller's liability: (a) for death or personal injury; (b) for fraudulent misrepresentation; or (c) in a manner or to an extent not permitted by law.



8.10 Buyer will indemnify Seller against all liability (whether to Buyer or to someone else), damages, claims, costs and expenses in respect of damage to property, or personal injury including death (not caused by Seller's negligence), or otherwise arising from any unauthorised use of any of Seller's property and/or any defect in any of Buyer's products which incorporate the Products unless: (a) the Products failed to comply with the warranty given by Seller in Clause 8.1; and (b) the Buyer has complied with the provisions of Clause 6. For the avoidance of doubt, damage to property includes the presence of any defect resulting from any chemical process that takes place within any finished product occurring after its manufacture or installation.

## **9. FORCE MAJEURE**

9.1 Neither party will be liable for failure to or delay in performing obligations under the Contract to the extent that performance of such obligations is delayed, hindered or prevented by Force Majeure. Seller may, during any period of shortage of Products due to Force Majeure or other cause, prorate and allocate its supply of Products or Services among its affiliated companies and its customers in such manner as may be deemed fair and reasonable by Seller. In no event, will Seller be obligated to purchase any Products in the market place to satisfy its obligations hereunder. The provisions of this Clause 9.1 will not apply to Buyer's obligation to pay for delivered Products.

9.2 If any delay due to Force Majeure lasts more than 90 Business Days then the party not affected may terminate the Contract without liability by notice to the other in writing. Costs arising from Force Majeure will be borne by the party incurring such costs.

## **10. TERMINATION**

10.1 The Contract commences on the Effective Date and subject to its other provisions will continue:

- (a) when there is a Sales Agreement, for an indefinite period; or
- (b) when there is no Sales Agreement until the date on which the Products are delivered and the amounts due are paid.

10.2 If there is a Sales Agreement then subject to any provision to the contrary in the Sales Agreement either party may terminate the Contract upon 6 months written notice to the other.

10.3 If Buyer fails to pay any sums due to Seller by the date on which the payment is due or if Buyer commits or is a party to dishonest or fraudulent conduct in relation to the Contract or if Buyer is in breach of any of its obligations under the Contract which (if the breach is capable of remedy) Buyer has failed to remedy within 20 Business Days after receipt of notice in writing from Seller requiring Buyer to do so or if there is a change of Control of Buyer or if Buyer becomes bankrupt, insolvent or makes an arrangement with its creditors or has a business rescue professional, liquidator, provisional liquidator, receiver or administrator



appointed or commences winding up (other than for the purposes of a bona fide amalgamation or reconstruction whilst solvent) or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceedings under any foreign law, Seller may without prejudice to any of its other rights:

- (a) stop any Products in transit and suspend all deliveries;
- (b) enter any premises where Products are stored and take possession of such Products in lieu of payment therefore; and/or
- (c) terminate the Contract and sue for damages, notwithstanding that the delivery of Products may be by instalments.

10.4 Clauses 2, 5, 6, 8, 11, 13 and 15 to 16 inclusive of these Conditions will survive the termination of the Contract.

## **11. NOTICES**

11.1 All notices given pursuant to this Contract will be in writing and marked for the attention of the Legal Department of Seller or the Legal Department of Buyer at (a) the relevant address specified in the Sales Agreement or (if there is no Sales Agreement) their registered office; or (b) the address subsequently notified by a party to the other in writing as their address for notices.

11.2 Notices may be sent by pre-paid international courier, in which case they will be deemed given on the third day after consignment, or by facsimile or e-mail (provided that facsimile or email notices are confirmed by pre-paid international courier), in which case they will be deemed given when confirmation is posted.

11.3 This Clause 11 will survive the termination of the Contract.

## **12. ASSIGNMENT**

12.1 Buyer will not be entitled to assign the Contract or any part of it without the prior written consent of Seller.

12.2 Seller shall have the right to assign the Contract. For the avoidance of doubt, this shall include Seller's right to payment resulting from Seller's fulfilment of the Contract which may be transferred, sold, pledged, encumbered or assigned by Seller to third parties in connection with any good faith financing transaction without the prior consent of Buyer.

## **13. COMPLIANCE**

13.1 By acceptance of the Products, Buyer represents and warrants that Buyer will comply with (a) the Regulation 1907/2006 of 18 December 2006 as amended concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") regarding all substances in the Products that are used or manufactured in or imported into the European



Economic Area; and (b) all other applicable laws and regulations in any jurisdiction relating to or impacting on the regulation of the Products.

13.2 Each party shall, at all times, comply with their respective obligations under all applicable Data Protection Legislation in connection with this Contract.

13.3 Each party represents, warrants and covenants that it does not and will not: a) employ children, prison labour, indentured labour, bonded labour; b) use corporal punishment or other forms of mental and physical coercion, or verbal, cruel or abusive practices as a form of discipline; and c) discriminate against any employees on any ground including race, religion, disability age or gender. In the absence of any national or local law the Parties agree to define "child" as being a person of less than fifteen (15) years of age. If local law sets the minimum age below 15 years of age, but is in accordance with exceptions under International Labour Organization Convention 138, the lower age will apply.

13.4 Each party represents, warrants and covenants that it:

- (a) shall not give, promise or offer any Bribe, or request, agree to receive or accept any Bribe, in connection with this Contract or its dealings with the other party (this applies whether the Bribe is direct or through another party, and whether or not it involves a government official);
- (b) confirms that it is not a government official and is not affiliated with any such official;
- (c) shall have in place adequate procedures to prevent those performing services on its behalf from committing Bribery; and
- (d) shall keep accurate and true records that are not misleading of all payments made in connection with this Contract or its dealings with the other party.

13.5 Both Parties agree that with at least thirty (30) days written notice, each party has the right to make inspections, and conduct appropriate audits of books and records which relate to this Contract, of all of the other party's premises and any other premises employed in connection with this Contract so as to ensure compliance with Clauses 7

13.3 and 13.4. A breach of this Clause by either party shall entitle the non-breaching party to terminate this Contract immediately upon written notice and the party found in breach of this Clause shall indemnify and keep the other party indemnified against all actions, proceedings, costs, claims, demands and expenses arising from such a breach and termination.

#### **14. GENERAL**

14.1 Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether under the Contract or not. Failure or delay by Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by Seller of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed to be a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.



14.2 If any provision or any part of any provision of the Contract is or becomes for any reason illegal, invalid or unenforceable in any respect under any law in any jurisdiction, neither the legality, validity or enforceability of the remaining provisions (or any parts of thereof) in that jurisdiction nor the legality, validity or enforceability of that provision (or part) or any other provision (or part) under the law of any other jurisdiction will in any way be affected or impaired.

14.3 Seller is a member of a group of companies, and accordingly, Seller may perform any of its obligations, or exercise any of its rights, or incur any detriment, hereunder by itself or through any Affiliate provided that any act or omission of any such Affiliate shall be deemed to be the act or omission of Seller. Save as stated in this Clause 14.3, the parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it by virtue of a third party beneficiary clause in the sense of article 5.107 of the Belgian Civil Code (Burgerlijk Wetboek / Code Civil).

14.4 Save as otherwise permitted by the Contract, as required by law, as the same is or will be in the public domain, is known by Buyer at the time of disclosure or is rightfully obtained by Buyer without restriction from third parties, Buyer will keep strictly private and confidential all information and documentation disclosed by Seller to Buyer which relates to any specifications or trade secrets of Seller (including without limitation Seller's proprietary processes of manufacture, know-how or methods of carrying on business) or which is designated by Seller as confidential and will not use, copy or disclose any of such information and documentation to any third party whatsoever.

14.5 Buyer will comply fully with all user instructions and safety recommendations issued by Seller in relation to the Products and (subject to Clause 8.9) Seller will not be liable to Buyer as a result of Buyer failing fully to observe the provisions of this Condition.

14.6 Buyer will take all such steps as are reasonably practicable or usual in connection with Products of the nature of the Products to eliminate or reduce any risk to health and/or safety to which delivery, loading, unloading, use or storage of the Products may give rise.

14.7 The headings in the Contract are for guidance only and will have no effect on the interpretation of these Conditions. For the avoidance of doubt, words and expressions defined in the Sales Agreement shall have the same meaning when used in these Conditions and words and expressions defined in these Conditions shall have the same meaning when used in the Sales Agreement (or, if there is no Sales Agreement, the Seller's invoice).

14.8 In the Contract, references to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

14.9 To enable Seller to fulfil any statutory and/or regulatory obligations and without prejudice to Clauses 6 and 13. Buyer will advise Seller if and when the end use of Buyer's final product changes to one that differs from that previously disclosed to Seller.

## **15. DISPUTE RESOLUTION, GOVERNING LAW AND JURISDICTION**



15.1 The parties agree to use their respective reasonable endeavours to promptly resolve any matters or disputes arising out of or in connection with the Contract ("Disputes"), including without limitation any question regarding its existence, validity or termination, or the legal relationships established by the Contract through negotiations between their respective representatives of the parties who have the authority to settle such Dispute.

15.2 The Contract shall be governed by and construed in accordance with the laws of Belgium. The application of Book X of the Belgian Code of Economic Law (Wetboek Economisch Recht / Code de Droit Economique) is excluded. Each Party hereby irrevocably submits to the jurisdiction of the Courts of Ghent, Belgium.

15.3 Where the Contract, an invoice, any transaction documents, or any part of any of them is provided in English and one or more additional languages, the English version shall be definitive.