

**SIBUR INTERNATIONAL GMBH**

**BUSINESS TERMS**

**OF SALES OF HYDROCARBONS**

**DELIVERY INTO TANK/ IN TANK TRANSFER (ITT)**

**(BT\_BU 10\_ITT)**

**January 01, 2015**

## CONTENTS

<b>INTRODUCTORY PROVISIONS</b>	3
<b>PARAGRAPH I</b>	
Goods	3
<b>PARAGRAPH II</b>	
Quality	3
<b>PARAGRAPH III</b>	
Quantity	4
<b>PARAGRAPH IV</b>	
Delivery basis	6
<b>PARAGRAPH V</b>	
Transportation	7
<b>PARAGRAPH VI</b>	
Shipment period	7
<b>PARAGRAPH VII</b>	
Laytime	7
<b>PARAGRAPH VIII</b>	
Demurrage	7
<b>PARAGRAPH IX</b>	
Price	7
<b>PARAGRAPH X</b>	
Payment terms	8
<b>PARAGRAPH XI</b>	
Responsibilities of the parties	10
<b>PARAGRAPH XII</b>	
Duration	12
<b>ANNEX 1</b>	
Contract template	14
<b>ANNEX 2</b>	
Guarantee template	15

### INTRODUCTORY PROVISIONS

- A. These Business Terms ("Business Terms") shall apply to all agreements for sale of goods ("Contract") executed by and between SIBUR International GmbH ("Sibur") and Buyer that incorporate these Business Terms by reference. The version of these Business Terms published by Sibur (whether delivered by Sibur to Buyer before or upon the entry into the Contract or, if not so delivered, then as published on the website <http://www.sibur-int.com>) as of the date when the Contract takes effect shall apply to the relevant Contract. The Business Terms may be amended, revised, restated or supplemented by Sibur from time to time.
- B. These Business Terms are accompanied and supplemented by the General Terms of SIBUR International GmbH for sales of petrochemicals and hydrocarbons ("General Terms"). The version of the General Terms published by Sibur (whether delivered by Sibur to the Buyer before or upon the entry into the Contract or, if not so delivered, then as published on the website <http://www.sibur-int.com>) as of the date when the Contract takes effect shall apply to the relevant Contract. The Parties agree that the General Terms are incorporated into these Business Terms by reference and that they apply to the Contract.
- C. If there is any conflict, ambiguity or inconsistency between General Terms, the Business Terms the Contract and/or Incoterms, the order of priority of such documents (from highest to lowest) shall be as follows:
1. the Contract;
  2. the Business Terms;
  3. the General Terms; and
  4. Incoterms
- D. All terms used, but not defined herein shall have the respective meanings set forth in the Contract and/or the General Terms, and/or Incoterms.

### PARAGRAPH I GOODS

- 1.1. Seller shall deliver the Goods to Buyer in accordance with the Contract.

### PARAGRAPH II QUALITY

- 2.1. Buyer upon Seller's prior written request shall send to Seller samples of the Goods for testing. Seller may at its own discretion and at its own expense perform such testing based on the TU and/or ASTM methods or initiate an inspection in accordance with Section 2.2. In the event either Party does not agree with the results of the test(s) made by the Seller in accordance with this Section 2.1., the quality inspection shall be performed by an independent Inspector in accordance with Section 2.2. hereof.
- 2.2. Unless otherwise agreed by the Parties in the Contract, the quality of the Goods shall be determined at the Terminal by its operator in accordance with the standard practice of the Terminal at the time of delivery. Such determination shall be witnessed and/or certified by an independent Inspector of an internationally recognised inspection company mutually agreed between the Parties and appointed by Seller.
- 2.3. The inspection results shall be documented in the Inspector's Report and shall be conclusive and binding on the Parties for invoicing purposes and for quality purposes and shall be final and binding for both Parties, except in case of fraud or manifest error.
- 2.4. In the event that the quality of the Goods does not conform with the contractual Specification, the Parties shall discuss Buyer's remedies for such non-conforming Goods. The remedies may include, for example, a Price adjustment for the Goods. The outcome of the Parties' discussion shall be documented in a written Amendment to the Contract.

- 2.5. The costs of the inspection (under Section 2.1.) shall be equally shared between Seller and Buyer. Any other inspections and related services, requested by Buyer, shall be performed at Buyer's sole expense.
- 2.6. The Party initiating the inspection shall ensure that the Inspector issues the Inspector's Report to Seller and Buyer as soon as practicable and retains any samples taken for at least ninety (90) Days from the date of inspection.
- 2.7. **Claims**  
Unless otherwise specified in the Contract claims if any on quality of the Goods to be provided by the Buyer to the Seller according to Part II of the General Terms.

### PARAGRAPH III QUANTITY

- 3.1. Unless the Contract provides otherwise, the quantity inspection (if any) shall be determined at the Terminal by its operator in accordance with the standard practice of the Terminal at the time of delivery and witnessed and/or certified by an independent Inspector of an internationally recognised inspection company mutually agreed between the Parties and appointed by Seller.
- 3.2. The quantity inspection of the liquid Goods shall be as per the volume in vacuum (unless the Contract explicitly provides for measurement in atmospheric pressure). The inspection results shall be documented in the certificate of quantity issued by the Inspector and shall be conclusive and binding on the Parties for invoicing purposes, except in case of fraud or manifest error.
- 3.3. Unless the Contract provides otherwise, the Planned Contract Quantity and/or the Planned Monthly Quantity (as the case may be) specified in the Contract shall be subject to a tolerance of plus/minus ten per cent (+/- 10 %) at Seller's discretion.
- 3.4. The Actual Contract Quantity and/or Actual Monthly Quantity (as appropriate) delivered under the Contract shall be equal to the quantity specified in the Certificate of In-tank title transfer (the "Certificate of ITTT") issued and duly signed by the appropriate Terminal operator and the Inspector. If there is no deviation between the Actual Contract Quantity/Actual Monthly Quantity and the Planned Contract Quantity/the Planned Monthly Quantity, subject to a tolerance of one half of one per cent (0.5 %) (the "Permitted Deviation"), Buyer shall accept the Goods with the quantity specified in the Certificate of ITTT. The Parties acknowledge and agree that in no event shall Seller be considered to be in breach of its obligations in respect of the delivery of the Goods in the quantity under the Contract and Buyer shall not be entitled to claim any losses or liquidated damages, or any other claims concerning any quantity deviation below the Permitted Deviation. All claims concerning quantity deviation in excess of one half of one per cent (0.5 %) shall be submitted by Buyer according to Section 3.9.
- 3.5. The Actual Contract Quantity shall be the basis for determining the Total Goods Value.
- 3.6. If Seller is not able to deliver the Planned Monthly Quantity or the Planned Contract Quantity of the Goods within a relevant period because of a reduction in the Manufacturer's production capacity, Seller shall give Buyer notice of this as soon as reasonably practicable, upon which the Parties shall mutually agree delivery terms for the outstanding quantity of the Goods, and Seller's suggestions shall be taken into account. However, Seller shall at no time be required to deliver more Goods than the Manufacturer makes available at the relevant time. The Parties acknowledge that the remedy provided in this Section will be the sole remedy that Buyer will have in the event Seller does not deliver the Planned Monthly Quantity or the Planned Contract Quantity of Goods during any relevant period.
- 3.7. In the event that Buyer orders less Goods than the Planned Monthly Quantity or the Planned Contract Quantity for a relevant period, Seller at its own discretion may elect either: (i) to agree to deliver the outstanding quantity of the Goods in the next period (the delivery schedule shall be decided by Seller taking into account Buyer's suggestions); or (ii) request the payment of ten per cent (10%) of the Price of the outstanding quantity of the Goods as liquidated damages (the Parties agree that the above amount is a genuine pre-estimate of liquidated damages Seller will suffer if the Seller delivers a quantity of Goods less than the Planned Monthly Quantity or the Planned Contract Quantity. Without prejudice to the above, if the amount of actual damages exceeds the above

amount, Seller may claim the actual amount of damages without limitation). Seller shall notify the Buyer the option it chooses to proceed in writing. However, failure to notify will not evidence the waiver of Seller's rights described above.

### 3.8. **Deviation from the Planned Amount of the Goods**

- a) In case the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of one hundred per cent (100%) but less than or equal to (one hundred and ten per cent (110%)) of the Planned Contract Quantity or the Planned Monthly Quantity respectively Buyer shall effect the payment of such outstanding balance within five (5) Days of an appropriate Seller's invoice.
- b) In case the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than one hundred per cent (100%) but in excess of or equal to ninety per cent (90%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, Seller at its own decision may elect either: (i) to deliver the Planned Contract Quantity or the Planned Monthly Quantity (as applicable) in future Shipments, or (ii) refund Buyer's Prepayment for the Goods not delivered within three (3) Days after the execution of the respective Verification Act (option (ii) is not applicable when the Contract provides for payment for Goods in arrears); or (iii) apply the Buyer's Prepayment to future Shipments of Goods to the extent of the value of Goods not delivered. In either event the conditions set forth in this Section shall be Buyer's sole and exclusive remedy for such Shipment, howsoever caused, always excepting fraud, and Seller shall have no other liability to Buyer whatsoever.
- c) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of one hundred and ten per cent (110%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, Buyer at its own discretion shall elect either: (i) to return any quantity in excess of one hundred and ten per cent (110%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively to Seller at Seller's expense, or (ii) to retain any Goods quantity in excess of one hundred and ten per cent (110%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively upon its agreement to pay the Price for the entire quantity taken provided that any of such Buyer's decisions shall be made within one (1) Day after Delivery Date of the respective Goods. The payment for such Goods shall be made by Buyer within five (5) Days after Seller's invoice date.
- d) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than ninety per cent (90%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, Buyer has the right to require Seller to pay to Buyer direct losses incurred by Buyer in connection with the event where Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than ninety per cent (90%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, provided that such direct losses are evidenced by the sufficient documents; such payment shall be made within seven (7) Days after the execution of the respective Verification Act by the Parties. It is expressly mutually agreed and acknowledged by the Parties that in any case maximum amount of the direct losses may not exceed ten per cent (10%) of the Price of the Goods which were not delivered. Subject to all other conditions hereof, where Seller is exempt from any liability (responsibility), in either event Buyer's rights set forth in this Section shall be Buyer's sole and exclusive remedy for such short delivery, howsoever caused, always excepting fraud, and Seller shall have no other liability to Buyer whatsoever.
- e) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is in excess of one hundred and ten per cent (110%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and Buyer fails to state its intention to return excess the Goods within the period specified above, Buyer will be deemed irrevocably to have retained the excess the Goods and will accordingly pay for the excess the Goods retained within five (5) Days after Seller's invoice.
- f) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than ninety per cent (90%) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and Buyer fails to state request to compensate within ten (10) Days after the Delivery Date, Buyer will be deemed irrevocably agreed with Seller's obligation to meet the Planned Contract Quantity or the Planned Monthly Quantity respectively (as the case may be) in further deliveries.

### 3.9. **Claims.**

Unless otherwise specified in the Contract claims if any on quantity of the Goods to be provided by the Buyer to the Seller according to Part II of the General Terms.

**PARAGRAPH IV**  
**DELIVERY BASIS**

**4.1. General Delivery Terms**

Seller shall use its reasonable endeavours to dispatch the Goods on the definite date or in any Day within the Shipment period (as the case may be), as specified in the Contract, but the time of dispatch shall not be of the essence. Seller shall notify Buyer immediately if the time of dispatch for the Goods cannot be met; in such a case the Parties shall re-schedule in good faith

**4.2. Transfer of risk and title**

4.2.1. The title and risk of loss and damage to the Goods shall transfer or deemed to be transferred from Seller to Buyer at the Delivery Date, unless otherwise provided herein, the General Terms and/or in the Contract. For the purposes of this Sections the Delivery Date shall mean the date of Goods transfer from Seller's tank into Buyer's tank at the Terminal as specified in the Certificate of ITTT issued and duly signed by the appropriate Terminal operator and the Inspector.

4.2.2. Notwithstanding the provisions of Section 4.2 hereof, any loss of, or damage to, the Goods occurring before or at the time of title transfer, that is caused by or attributable to Buyer or the receiver of the Goods or any of their respective contractors, agents or employees shall be for account of Buyer.

4.2.3. The Parties agree that the transfer of title and risk to the Goods is not conditional upon delivery of the necessary transfer documentation relating to the Goods produced by Terminal or any other documentation.

**4.3. Requirements for the Transport**

The Transport designated for delivering the Goods shall comply with all applicable Laws in force at the Terminal and regulations and requirements of whatever nature as detailed.

**4.4. Nomination procedures.**

Nominations of the Transport shall be made as determined in the Contract or, if not specified, in accordance with the standard operating procedures of the Terminal.

**4.5. Taxes, Duties, Other Charges and Costs**

4.5.1. Seller shall be liable for all costs imposed or levied on the Goods prior to risk and title to the Goods passing to Buyer, including but not limited to all taxes, duties, imposts, charges, fees and dues. Buyer shall be liable for all costs imposed or levied on the Goods after taking risk and title, including but not limited to all taxes, duties, imposts, charges, fees and dues, and, in the case of taxes only, even if the tax laws are amended and such changes are applied retroactively, after the passing of risk and title to the Goods to Buyer has taken place.

4.5.2. Should Value Added Tax (VAT), Mineral Oil Tax (MOT), Excise Duty (ED) or other tax or duty be applicable from the sale of the Goods or the transfer of risk and title therein (which, without limitation, may be levied depending on the destination of, use of and/or documentation of the Goods), Seller shall invoice Buyer for these unless Buyer can prove to Seller that the purchase of the Goods is exempt therefrom, in which case Buyer shall provide proof of such exemption (including but not limited to the destination and use of the Goods) satisfactory to Seller.

4.5.3. Buyer shall indemnify Seller against all costs, penalties and interest associated with the payment or recovery of any taxes and/or duties where the documentation provided by Buyer relating to the tax or duty fails to comply with the necessary requirements, including but not limited to timelines, and any circumstance of fraud or misrepresentation.

4.5.4. Seller shall use its reasonable endeavours to ensure that the correct tax or duty is payable on the sale of the Goods and mitigate unnecessary costs and charges to Buyer. Should taxes and/or duties which are payable by or on behalf of Buyer be subsequently recoverable by Seller, Seller shall inform Buyer and then Seller shall use its reasonable endeavours, at Buyer's expense and cost, to obtain a credit or repayment in respect of such taxes and/or duties. If Seller succeeds at recovering any repayment, Seller shall pay it to Buyer within seven (7) Days of receiving the credit or repayment, after first deducting any costs, charges and taxes incurred by Seller associated with such credit or repayment.

4.5.5. Buyer shall pay Seller for any other expenses, costs or charges that Seller incurs or is subject to, arising directly as a result of a transfer of the Goods made under the Contract, provided that such expenses, costs or charges are not expressly stated to be for Seller's account, pursuant to the Contract.

**PARAGRAPH V  
TRANSPORTATION**

*Not applicable for delivery into tank/ in tank transfer.*

**PARAGRAPH VI  
SHIPMENT PERIOD**

- 6.1. The Shipment Date shall be specified in the Contract and shall be not of the essence.
- 6.2. (i) If the Parties agree that the Shipment period shall be any month of a year without indication of the dates, and  
(ii) if within ten (10) Days prior to the last Day of such month the dates of dispatch are not agreed by the Parties, Seller shall be entitled not to deliver the respective Shipment and/or sell such Shipment to any Third party and shall not be liable to Buyer for such non-delivery or for any losses and expenses incurred by Buyer. If Seller decides to sell the respective Shipment to any Third party Buyer shall reimburse to Seller all expenses arising out and/or in connection with such sales.

**PARAGRAPH VII  
LAYTIME**

*Not applicable for delivery into tank/ in tank transfer.*

**PARAGRAPH VIII  
DEMURRAGE**

*Not applicable for delivery into tank/ in tank transfer.*

**PARAGRAPH IX  
PRICE**

- 9.1. The Price for the Goods shall be determined in the Contract.
- 9.2. Should the final Price for the Goods not be known at the time of invoicing, Seller shall prepare a provisional invoice based upon the pricing information available at the time and Buyer shall make payment against the provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties in the Contract, be based upon one hundred per cent (100 %) of the quantity specified in the bill(s) of lading and the preliminary Price calculated based on the formula specified in the Contract.
- 9.2.1. If the amount paid by the Buyer against provisional invoice for the Goods is less than the amount due to be paid for the Actual Contract Quantity at the agreed (final) Price, calculated according to the formula specified in the Contract, Buyer shall effect the payment of such outstanding balance within three (3) Business days of the receipt of Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing information becomes available to Seller.
- 9.2.2. If the amount paid by the Buyer against provisional invoice for the Goods exceeds the amount due to be paid for the Actual Contract Quantity at the agreed (final) Price, calculated according to the formula specified in the Contract, Seller shall issue the final invoice (which shall be prepared as soon as practicable after all the relevant pricing information becomes available to Seller) and request Buyer if (i) such difference between the amounts will be applied to the further deliveries if applicable or (ii) Seller shall return such difference between the amounts within three (3) Business days of a mutually acceptable appropriate Verification Act being executed by the Parties. If Buyer selects option (ii), then Seller shall prepare and send the Verification Act to Buyer within two (2) Business Days upon receipt of Buyer's respective decision in writing.

**PARAGRAPH X  
PAYMENT TERMS**

***Unless otherwise specified in this Business Terms general payment terms shall be in accordance with Part III ("GENERAL PAYMENT TERMS") of the General Terms***

**Section 10.1. Prepayment (advance payment)**

***This Section 10.1 applies to Contracts specifying Prepayment, unless the Contract provides otherwise***

10.1.1. Buyer shall pay for the Goods as follows:

- i. The Buyer shall pay one hundred per cent (100%) of the amounts specified in Seller's proforma invoice in advance of delivery within five (5) Business Days after the date of the invoice but no later than three (3) Business Days prior to the Goods' dispatch by the Manufacturer as indicated in the invoice.
- ii. Buyer shall pay by wire transfer and without deduction or setoff into Seller's bank account and Buyer shall indicate the number and the Signing Date of the Contract/Amendment and proforma invoice number in the payment reference .
- iii. If the amount paid by Buyer as Prepayment for the Goods is less than the amount due to be paid for the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) Buyer shall pay the outstanding balance within five (5) Days of Seller's invoice for the balance.
- iv. If the amount paid by Buyer as Prepayment for the Goods exceeds the amount due to be paid for the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) the Parties shall mutually agree whether (i) the difference will be applied to future Shipments, if applicable or (ii) the Seller shall return such difference between the amounts within five (5) Business Days of the signing of the Verification Act by the Parties.

**Section 10.2. Post payment**

***This Section 10.2 applies to Contracts specifying Post payment, unless the Contract provides otherwise***

10.2.1 Buyer shall pay one hundred per cent (100%) of the amounts specified in Seller's invoice not later than the date specified in the Contract.

10.2.2 Partial payments shall be allowed, subject to subsection 10.2.1 above.

**Section 10.3. Letter of Credit**

***This Section 10.3 applies to Contracts specifying Letter of Credit, unless the Contract provides otherwise***

10.3.1 Issuance of the Letter of Credit. Buyer shall procure issuance of the Letter of Credit within five (5) Business Days from the Signing Date in accordance with these Business Terms and the Contract.

10.3.2 Validity period of the Letter of Credit. The validity period for the Letter of Credit shall cover the payment period in the Contract plus thirty (30) Days, provided, however, that the total minimum validity period shall be no less than ninety (90) Days. Buyer shall procure that the validity period of the Letter of Credit shall be extended if a Force Majeure Event extends the payment period under the Contract.

10.3.3 Documents

Buyer shall procure that:

(a) the only documents required to be presented by Seller to collect under the Letter of Credit shall be the following:

- i. Seller's invoice (fax or email copy); and
- ii. Certificate of ITTT;

(b) documents prepared in Russian are acceptable; and

(c) minor mistakes and misprints in the documents are acceptable.



#### 10.3.4 Letter of Credit Conditions

The payment for the Goods shall be effected by Buyer as follows:

- i. Buyer shall procure issuance in favour of Seller an irrevocable and divisible Letter of Credit payable at sight in strict accordance with the terms and from a bank and in a form confirmed in writing by Seller but in any case prior to the dispatch of Goods;
- ii. Buyer shall provide Seller with the draft of such irrevocable Letter of Credit for Seller's preliminary written approval;
- iii. Expenses in connection with the opening, amendment and utilisation of the Letter of Credit shall be paid by Buyer; and
- iv. The Letter of Credit shall be issued in the amount of one hundred and ten per cent (110%) of the Price multiplied by the Shipment quantity of the Goods to be delivered.

### **Section 10.4. Security of the Buyer's Payment Obligations**

***This Section 10.4 applies to Contracts specifying the Security of the Buyer's payment obligations***

#### 10.4.1 **Stand-by Letter of Credit**

a) Issuance of Stand-by-Letter of Credit. The Buyer shall procure the issuance of a Stand-by Letter of Credit within five (5) Business Days from the Signing Date in accordance with these Business Terms and the Contract.

b) Validity period. The validity period for the Stand-by Letter of Credit shall be ninety (90) Days.

c) Stand-by-Letter of Credit procedure. If Buyer fails to pay one hundred per cent (100%) of the amount specified in Seller's invoice within the time specified in the Contract the Seller may immediately look to the Stand-By Letter of Credit against the presentation by Seller to Seller's bank (as specified in Seller's invoice) of the following documents:

- i. Seller's (Beneficiary) letter with the following statements (telex, fax or email acceptable):
  - the Seller has delivered the Goods in conformity with the Contract and these Business Terms and the invoice has been sent to the Buyer; and
  - payment of Seller's invoice for delivery of the Goods is properly due to the Seller, and such payment has not been made to the Seller by the Buyer within the terms of the Contract;
- ii. copy of the Seller's invoice (telex, fax or email acceptable);
- iii. Certificate of ITTT (telex, fax or email acceptable).

d) Stand-by Letter of Credit Conditions. Buyer shall pay for the Goods as follows:

- i. Buyer shall procure issuance in favour of the Seller an irrevocable Stand-By Letter of Credit payable in accordance with the terms and from a bank and in a form confirmed in writing by Seller but in any case prior to the Goods' dispatch.
- ii. The Stand-By Letter of Credit shall be issued for the amount of one hundred and ten per cent (110 %) of the Planned Contract Quantity or the Planned Monthly Quantity (as the case may be) and shall be valid for a period specified in the Contract. Buyer shall procure the extension of the validity period of the Stand-by Letter of Credit to the extent that the payment period is extended by a Force Majeure Event.
- iii. Buyer shall provide Seller with a draft of such Stand-By Letter of Credit for Seller's preliminary written approval.
- iv. Expenses in connection with the opening, amendment and utilisation of the Stand-By Letter of Credit shall be paid by Buyer.
- v. Any and all costs, loss or damage incurred by Seller as a result of Buyer's failure to comply with this Section shall be for Buyer's account and Seller shall indemnify Seller and hold it harmless against all such costs, loss and damage.

#### 10.4.2 **Parent company guarantee**

Upon Seller's request, Buyer shall provide Seller with, and shall procure delivery to Seller of, Buyer's parent company guarantee securing the performance of all the Buyer's obligations under the Contract (including these Business Terms and the General Terms) in the form at Annex 2 hereto. Such guarantee shall be provided within ten (10) Business Days after Seller's request and shall be in writing, in a form satisfactory to the Seller and issued for the term of the Contract plus six (6) months. If Buyer has no parent company satisfactory to Seller, the guarantee may be issued by an Affiliate(s) or other third party(ies) as agreed with Seller. Seller is not obliged to deliver the Goods until the requested guarantee is duly furnished and Buyer shall reimburse to Seller upon demand any and all related costs in connection with such delay. If Buyer delays the provision of the guarantee for more than ten(10) Business Days, Seller is entitled to terminate the Contract by written notice to Buyer.

#### 10.4.3 Bank guarantee

The Buyer shall provide Seller with an irrevocable and unconditional bank guarantee issued in favour of Seller and securing the performance of all of Buyer's obligations under the Contract. The bank guarantee shall be provided within ten (10) Business Days after the date of signing of the Contract and shall be issued for an amount and by a bank previously confirmed in writing by Seller but in any case prior to the Goods' dispatch. The bank guarantee shall be issued for the term of the Contract plus thirty (30) calendar days and shall be transferred by SWIFT or other interbank communications system via the bank of the Seller. Buyer shall procure issuance of and any amendment to the bank guarantee at its own expense.

Seller is not obliged to supply the Goods until the requested bank guarantee is duly furnished and the Buyer shall pay to Seller any and all related costs in connection with such delay. If the Buyer delays the provision of the bank guarantee for more than ten (10) Business Days, Seller may elect, at its own discretion, either to (di) change the payment terms of the Goods to Prepayment (Section 10.1. hereof), or (ii) suspend the performance of the Contract, or (iii) unilaterally terminate the Contract. Such suspension and/or termination shall not entitle the Buyer to claim for liquidated damages.

#### 10.4.4 Reinstatement of Guarantee

If any guarantee, including but not limited to bank guarantee, of a parent company or of any other third party(ies) specified in the subsection 10.4.3. hereof and/or the Letter of Credit, and/or the Stand-by Letter of Credit, which were provided by the Buyer to the Seller in accordance herewith, ("Guarantees") ceases or threatens to cease to be effective and/or valid due to Sanctions, bankruptcy, insolvency, reorganization, liquidation, revocation of a licence or similar proceedings in respect of bank, parent company or any other third party(ies) specified in the subsection 10.4.2. hereof, and/or for any other reason, not related to the Seller, prior to the term herein stipulated, the Buyer shall procure the reissuance of such Guarantee in compliance herewith, promptly but not later than ten (10) Days from the occurrence of any event indicated in this Section. Where Buyer fails to procure reinstatement of any Guarantee within the specified term, Seller is entitled upon written notice to Buyer to suspend performance of all and any obligations hereunder until the new Guarantee is provided, and/or cancel and/or resell or otherwise dispose of the Goods to any third party. Seller shall be not liable for such suspension of the obligation's(s') performance, and/or cancellation, and/or resale and any other disposal of the Goods. Buyer may not make any claims in connection with such acts of the Seller notwithstanding anything to the contrary herein and in the applicable Law.

In any case the Buyer shall reimburse to the Seller within seven (7) days from receipt of a written demand all and any costs, charges, expenses and losses, including related to storage, transport, resale and disposal of the Goods, demurrage incurred by the Seller in connection with non-performance or improper performance of obligation for the Guarantee's/Guarantees' reissue by the Buyer.

### **PARAGRAPH XI** **RESPONSIBILITIES OF THE PARTIES**

#### 11.1. Delivery liquidated damages

- a. For each full Week of delay in Seller's delivery of the Goods commencing thirty (30) Days after the latest date within the Shipment period as specified in the Contract, the Buyer shall be entitled to demand liquidated damages from the Seller for such delivery delay in the amount equal to 0.1% (one tenth of one per cent) of the Price for the late delivered Goods per Day, up to a maximum of 10% (ten per cent) of the Price for the late delivered Goods.
- b. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery and the Buyer shall not be entitled to liquidated damages until the Seller is at least more than 30 (thirty) Days late under the terms and conditions specified in the Contract. The Seller shall not be liable to the Buyer in liquidated damages for delay caused by a Force Majeure Event, failure or default on the part of the Buyer, or where the Seller is entitled to delay delivery pursuant to the terms of the Contract.

c. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery or non-delivery of the Goods and the Buyer shall not be entitled to claim any losses, or liquidated damages, or any other claims in case of the planned Manufacture production capacity repair; provided that the Seller shall notify the Buyer of such

repair not later than one week prior to the month when the repair is planned. The Parties acknowledge and agree that Seller's notification of the repair is enough and sufficient evidence and confirmation of the planned repair.

d. THE LIQUIDATED DAMAGES SET FORTH HEREUNDER TOGETHER WITH THE RIGHT OF TERMINATION SET OUT IN SECTION 12.3. HEREOF SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY LATE DELIVERY OF ANY GOODS OR PART THEREOF AND THE SELLER SHALL HAVE NO FURTHER LIABILITY WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY).

11.2. **Interest for late payment.** In case the Buyer fails to comply with the terms of the payment set out in the Contract the Buyer shall pay to the Seller interest at the lesser of (i) one month LIBOR plus 4% (four per cent) per annum of the outstanding amount or (ii) the maximum allowed by applicable Law.

11.3. **Suspension.** If the conditions or terms of payment are breached by the Buyer the Seller may, at the Seller's option, either suspend delivery of the Goods to the Buyer or unilaterally terminate the Contract. Such suspension shall not constitute a delay for the purposes of liquidated damages.

11.4. **Late acceptance.** In the event that the Buyer fails or refuses to accept delivery of the Goods or any part thereof (i.e. have not commenced the accepting and unloading/loading of the Goods as the case may be; or furnished the Seller with explanation of delay and further instructions as regards the Goods satisfactory for the Seller); provided that such Goods have been delivered in accordance with the terms of the Contract, without prejudice to the Seller's other rights under the Contract or the applicable Law, the Seller is entitled to pass the Goods to a proximate logistic company or keeper at the Buyer's risk and expense of which the Buyer shall be notified within reasonable time. The Seller is entitled to exercise its right hereunder irrespective of whether the title to the Goods has passed to the Buyer under the Contract or not. The quantities of the Goods passed confirmed by such a logistic company or keeper shall be deemed as due confirmation of the quantities of the Goods delivered by the Seller; the term for quality claims for the Goods specified in Section 2.7 hereof shall commence as of the expiration of the laytime. The Seller shall be entitled to claim without limitation all and any transport and/or insurance cancellation costs, storage costs, additional transport costs, customs duties and other similar or related costs and all expenses arising out of or in connection with such late acceptance from the Buyer till the moment when the Goods are taken by the Buyer.

11.5. **The Seller's disposal rights.** In the event that the Buyer (or the Buyer's authorized representative, or the Buyer's Carrier, etc.) fails or refuses to accept delivery of the Goods or any part thereof within 5 (five) Days of the due date mutually agreed by the Parties, entirely without prejudice to the Seller's other rights under the Contract or the applicable Law, the Seller shall at its sole discretion be entitled to sell the quantity of the Goods which were not taken by the Buyer. The Seller is entitled to exercise its right hereunder irrespective of whether the title to the Goods has passed to the Buyer under the Contract or not. The Seller is also entitled either (i) to demand the Buyer to reimburse all Seller's costs of sale including, without limitation, storage costs, additional transport costs, customs duties, and other similar or related reasonable costs and expenses together with any difference in the price obtained for the Goods when compared to the Price of the Goods set out in the Contract; or (ii) to deduct the amount of the received advance payment (applicable to the prepayment) for the damages incurred by the Seller as a result of such refusal; after calculating the damages the remaining part of the advance payment shall be either returned to the Buyer or offset against further Shipments.

11.6. **Limitation of liabilities**

a. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE WHETHER IN THE CONTRACT, IN TORT (INCLUDING GROSS NEGLIGENCE), UNDER ANY WARRANTY OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR EXEMPLARY OR PUNITIVE LOSSES OR DAMAGES, OR ANY LOSS OF PROFITS (SAVE IN RELATION TO SELLER'S LOSS OF PROFIT ARISING FROM THE BUYER'S FAILURE OR REFUSAL TO TAKE OR ACCEPT DELIVERY OF THE GOODS OR ANY PART

THEREOF CONTRARY TO THE TERMS OF THE CONTRACT) OR REVENUES, OR ANY COST OF LABOR, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE GOODS OR SELLER'S PERFORMANCE UNDER, OR BREACH OF, THE CONTRACT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY SHALL UNDERTAKE ITS BEST EFFORTS TO MITIGATE ITS LOSSES.

- b. FOR THE AVOIDANCE OF DOUBT, EITHER PARTY MAY SEEK TO RECOVER FROM THE DEFAULTING PARTY ANY ACTUAL DIRECT DAMAGES INCURRED AS A RESULT OF THE DEFAULTING PARTY'S BREACH OF CONTRACT (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS); PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING CONTAINED HEREIN, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE SELLER'S LIABILITY IN CONNECTION WITH THE GOODS OR THE CONTRACT EXCEED THE TOTAL GOODS VALUE (INCLUDING, BUT NOT LIMITED TO TRANSPORTATION COSTS, STORAGE COSTS, ETC.) PAID TO THE SELLER BY THE BUYER FOR THE GOODS.
- c. UNDER NO CIRCUMSTANCES SHALL THE SELLER BE LIABLE FOR THE BUYER'S LOSS OF PROFIT, NON RECEIPT OF REVENUE, BUSINESS INTERRUPTIONS, THE SUSPENSION OF COMMERCIAL ACTIVITIES, OR FOR ANY INDIRECT LOSS IRRESPECTIVE OF ITS CHARACTER AND REASON.
- d. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE EXCLUSIVE REMEDIES AND LIMITATIONS OF LIABILITIES SET FORTH HEREIN WERE BARGAINED FOR ON AN EQUAL FOOTING AND ARE CONDITIONS OF THE CONTRACT.
- e. NOTHING IN THE CONTRACT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR FOR FRAUDULENT MISREPRESENTATION.
- f. Adverse Weather. The Parties shall not be liable for delay caused by adverse weather. Notwithstanding the customary rules at the Place of Destination the Parties agree to evenly split losses caused by the adverse weather conditions and beyond the insurance coverage or other compensation from third parties.

## PARAGRAPH XII

### DURATION

12.1. The Contract shall come into effect on the Signing Date and, subject to observance of Sections 12.2-12.3. hereof shall continue in force until all obligations have been fulfilled (unless earlier terminated hereunder or the Parties agreed otherwise in writing) and in the part of payments – until such time that same are made in full.

#### 12.2. Buyer's default

- a) The Seller may, at its sole discretion and in addition to any other legal remedies it may have, upon giving written notice to the Buyer suspend all deliveries under the Contract and/or unilaterally terminate the Contract where:
  - i. the Buyer is in breach of any condition of the Contract;
  - ii. delivery or unloading of the Goods is delayed due to any cause(s) attributable to the Buyer and such delay is not excused by any other provision of the Contract;
  - iii. loading or unloading of the Goods is delayed by more than 10 (ten) hours after the NOR has been tendered due to reasons attributable to the Buyer;
  - iv. the Buyer or its parent company commences, or becomes the subject of, any bankruptcy, insolvency, reorganization, administration, liquidation or similar proceeding or is in the Seller's reasonable opinion expected to be unable or unwilling to pay its debts as the same become due;
  - v. the Buyer or its parent company ceases or threatens to cease to function as a going concern or conduct its operations in the normal course of business;
  - vi. a creditor attaches or takes possession of all or a substantial part of the assets of the Buyer or its parent company; or
  - vii. if applicable, the Buyer delays the provision of the parent company guarantee or other security of its obligations as provided in the Contract for more than 10 (ten) Business Days.
- b) Where the Seller suspends delivery of the Goods due to any of the events referred to under the Section 12.2. a) hereof, the Seller may, so long as such event is continuing, at any time unilaterally terminate the entire Contract.

- c) Where, pursuant to the provisions of Section 12.2. hereof, the Seller, under the Contract providing for multiple Shipments, temporarily suspends the delivery of the Shipment and then decides to resume delivery of the Shipments under the Contract, the Seller may cancel the suspended delivery of Shipment and shall be under no obligation to make up for any quantity of the Goods that would have been delivered to the Buyer but for such suspension.
- d) Where the Contract provides for multiple Shipments then the rights given to the Seller in the Section 12.2. hereof, apply to all such Shipments where the Seller is allowed to terminate in respect of one Shipment, then it is entitled to terminate all the remaining Shipments.
- e) Any termination of the Contract by the Seller shall be without prejudice to the rights and obligations of each Party as accrued on the date of termination.

### **12.3. Seller's default**

- a) The Buyer may at its sole discretion, and in addition to any other legal remedies it may have, upon giving notice to the Seller terminate the Contract, where the Seller, for any reason whatsoever, is in a material breach of any conditions of the Contract.
- b) In relation to multiple Shipments under the Contract, the Buyer's right to terminate under this Section 12.3 hereof or otherwise, only applies to the Shipment in respect of which the Seller is in breach and not to future Shipments.
- c) Any termination of the Contract by the Buyer shall be without prejudice to the rights and obligations of each Party as accrued at the date of termination.

12.4 In the event of termination of the Contract by either Party pursuant to the provisions of Section 12.2 or Section 12.3 hereof then, save where the Buyer has terminated only part of a multiple Shipments under the Contract, and in addition to any direct losses arising from the default or breach, the Party so terminating shall be entitled to claim damages from the Party in default as if the Party in default had failed to deliver or failed to accept, as the case may be, such quantity of the Goods as remained to be delivered under the Contract at the date of termination.

**CONTRACT (TEMPLATE)**

<b>The Buyer</b>	<b>The Seller</b>
<p>[insert the name of the company], a company organized and existing under the law of [insert the country name]</p> <p>with its registered legal address at [insert the address]</p> <p>represented by [insert the authorized person of the company]</p> <p>acting on the basis of [insert]</p> <p>Attn. to:</p> <p>Tel.</p> <p>FAX:</p> <p>E-MAIL:</p>	<p>[insert the name of the company], a company organized and existing under the law of [insert the country name]</p> <p>with its registered legal address at [insert the address]</p> <p>represented by [insert the authorized person of the company]</p> <p>acting on the basis of [insert]</p> <p>Attn. to:</p> <p>Tel.</p> <p>FAX:</p> <p>E-MAIL:</p>

**CONTRACT № [insert the number]**

<b>Signing Place: [insert the place]</b>	<b>Date</b>	<b>[insert</b>	<b>document</b>	<b>date]:</b>		
I. GOODS	II. QUALITY	III. QUANTITY	IV. DELIVERY BASIS	V. TRANSPORTATION	VI. SHIPMENT PERIOD	VII. LAYTIME
VIII. DEMURRAGE	IX. PRICE	X. PAYMENT TERMS		XI. RESPONSIBILITIES OF THE PARTIES	XII. DURATION	

<p><b>BUSINESS TERMS</b></p> <ol style="list-style-type: none"> <li>1. This Contract is intended to be accompanied and supplemented by Business Terms [insert the number/name of the Business Terms] of SIBUR International GmbH ("Business Terms") which shall be accessed via the following link <a href="http://www.sibur-int.com">www.sibur-int.com</a>.</li> <li>2. It is expressly agreed and acknowledged by the Buyer that the Business Terms are the integral part hereof and considered incorporated into this Contract.</li> <li>3. THE BUYER HEREBY EXPRESSLY ACKNOWLEDGES AND CONFIRMS THAT THE BUSINESS TERMS WERE READ VERY CAREFULLY, ACCURATELY AND PRECISELY AS THEY INCLUDE CERTAIN EXCLUSIONS, INCLUDING BUT NOT LIMITED TO, LIMITATIONS OF LIABILITY CONDITIONS, ARBITRATION AGREEMENT AND CONFIRMATION PROCEDURE.</li> <li>4. If there is any conflict, ambiguity or inconsistency between the terms and conditions of this Contract and the terms and conditions of the Business Terms, the terms and conditions of this Contract shall prevail.</li> </ol>	<p>The Seller:</p>
<p>The Buyer:</p>	<p>The Seller:</p>

**GUARANTEE (TEMPLATE)****GUARANTEE**

Signing Date: [ ] [ ]

THIS GUARANTEE (the "Guarantee") is made as a deed on the date written above (the "Signing Date")

BY:

[ ], a company organised and existing under the laws of [ ], with its office at [ ], represented by, [ ] acting on the basis of [ ] ("Guarantor"),

IN FAVOUR OF:

SIBUR International GmbH, a company organised and existing under the laws of Austria, with its registered legal address at Prinz-Eugen-Straße 8-10, A-1040 Vienna, Austria ("Seller", and, together with Guarantor, the "Parties", each being a "Party").

RECITALS:

WHEREAS, the Seller and [ ], a company organised and existing under the laws of [ ], with its registered legal address at [ ] (hereinafter referred to as the "Buyer"), entered into a Contract [ ] dated [ ] between the Seller, on the one hand and the Buyer, on the other hand (hereinafter referred to as the "Contract"); and

WHEREAS, the Guarantor has agreed to provide assurances for fulfilment of Buyer's payments and other obligations under and in connection with the Contract ;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees as follows:

THIS GUARANTEE WITNESSETH as follows:

Guarantee. Guarantor hereby irrevocably, absolutely and unconditionally:

guarantees as primary obligor to Seller and not merely as surety only the full, complete and punctual performance by Buyer of all obligations, duties and undertakings of Buyer under the Contract, as may be amended or modified from time to time. Should Buyer fail to perform any of said obligations, Guarantor undertakes to and shall perform such obligations, or arrange performance thereof, in accordance with the terms of the Contract;

guarantees as aforesaid and without prejudice to the generality of the foregoing, the punctual payment by Buyer of any sums due by Buyer to Seller under or in respect of or pursuant to the Contract, as the Contract may be amended or modified from time to time, including (but not limited to) any claims or damages for breach thereof and together with any interest due thereon (collectively with the obligations referred to in paragraph (a) of this Clause, the "Guaranteed Obligations");

undertakes with Seller that whenever Buyer does not pay any amount when due under the Contract, Guarantor shall within [insert the period] business days after receiving a demand from Seller pay to Seller that amount as if it was the principal obligor. Should Guarantor default for any reason to pay the respective amount pursuant to Seller's request within the term specified above, Guarantor shall pay interest to Seller in the amount of one per cent (1%) of the outstanding unpaid amount per week;

indemnifies Seller immediately on demand against any costs, loss or liability suffered by Seller as a result of any Guaranteed Obligation being or becoming unenforceable, invalid or illegal. The amount of cost, loss or liability shall be equal to the amount which Seller would have been entitled to recover if such Guaranteed Obligations were enforceable, valid or illegal.

This Guarantee is a continuing guarantee and will extend to (i) the ultimate balance of sums payable by Buyer to Seller and/or (ii) the performance of the other Guaranteed Obligations by Buyer under the Contract, regardless of any intermediate payment or discharge in whole or in part.

Guarantee Absolute. The obligations of Guarantor hereunder shall not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate Guarantor from Guarantor's obligations hereunder in whole or in part. The liability of the Guarantor under this Guarantee shall be absolute and unconditional irrespective of:

any lack of validity or enforceability of or defect or deficiency in the Contract or any other documents executed in connection with the Contract;

any modification, extension or waiver of any terms of the Contract;

any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any agreement or instrument executed in connection therewith;

any failure, omission, delay, waiver or refusal by Seller to exercise, in whole or in part, any right or remedy held by Seller with respect to the Contract or any transaction under the Contract;

any change in the existence, structure or ownership of Guarantor or Buyer, or insolvency, bankruptcy, reorganisation or other similar proceeding affecting Buyer or its assets;

any other circumstance that might otherwise constitute a discharge, postponement, reduction, non-provability or other similar circumstance affecting any obligation of Buyer under the Contract or of Guarantor on respect of this Guarantee, other than payment in full and/or performance (as the case may be) of the Guaranteed Obligations; or

Guarantor's lack of awareness or notice of any of the foregoing.

The obligations of Guarantor hereunder are several from Buyer or any other person or entity, and are primary obligations concerning which Guarantor is the principal obligor. There are no conditions precedent to the enforcement of this Guarantee, except as expressly contained herein.

Guarantor agrees and acknowledges that any decision of any arbitral tribunal appointed in accordance with the Contract and/or any court in respect of or in connection with the Contract or any agreement reached between Buyer and Seller shall be binding on Guarantor as a party to this Guarantee.

This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Seller upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Buyer or any other guarantor, or upon or as a result of the appointment of an administrator, provisional liquidator, receiver, intervener or conservator of, or trustee or similar officer for, Buyer or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made.

Waiver. Guarantor hereby waives its right to be discharged by, or have a claim against Seller in respect of any amendment or supplement being made to the Contract and/or this Guarantee and agrees that this Guarantee shall not in any way be adversely affected or impaired by any time, indulgence, waiver, consent or any other concession granted to Buyer and/or the Guarantor.

The Guarantor undertakes to Seller that Guarantor has not taken and will not take any security from Seller in respect of Guarantor's obligations hereunder. Any security taken by Guarantor in breach of this provision and all monies at any time received in respect thereof shall be held in trust for Seller as security for the obligations of Guarantor hereunder. Guarantor waives any defence or right arising by reason of any disability or lack of authority or power of Seller and shall remain liable hereunder if Seller, Buyer or any other party shall not be liable under the Contract for such reason.

Expenses. Guarantor agrees to pay on demand any reasonable costs, including reasonable legal fees, and other documented expenses incurred by Seller in enforcing Guarantor's payment obligations under this Guarantee.

Notices. All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, be in English in writing and shall be addressed and delivered in person or by Federal Express, DHL (or other recognized international courier service requiring signature upon receipt) or by facsimile or email (as evidenced by a paper copy of such email) to the party receiving the notice at the address set forth below or at such address as may be designated by written notice, from time to time, to the other party. Such demands, notices and other communications shall be deemed effective upon receipt or, in the case of facsimile or email or other means of telecommunication, upon written confirmation of receipt by the other Party (such confirmation to be transmitted in person, by email or international courier as provided above). For purposes of notice, the addresses of the Parties shall be as follows:

If to the Seller:



For the attention of: [insert]

Address: [insert]

Facsimile no.: [insert]

Email: [insert]

If to the Guarantor:

For the attention of: [insert]

Address: [insert]

Facsimile no.: [insert]

Email: [insert]

**Demand and Payment.** Any demand by Seller for performance hereunder shall be in writing and delivered to Guarantor pursuant to Clause 5 hereof, and shall (a) reference this Guarantee, (b) specifically identify Buyer and the Guaranteed Obligations to be paid and/or performed (as the case may be) and (c) set forth payment instructions in respect of any amount or amounts payable to Seller. There are no other requirements of notice, presentment or demand other than stated in this Guarantee.

Any payment to be made hereunder by Guarantor shall be made without set off or counterclaim save as hereinbefore provided and shall be made free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

**Assignment; Successors and Assigns.** The provisions of this Guarantee shall be binding on and inure to the benefit of Seller and its respective successors and permitted assigns. None of the Parties may assign its rights and/or delegate its obligations under this Guarantee to any third party without the other Parties' prior written consent, except that the Seller may assign this Guarantee to a third party without such consent and the assignee becomes the beneficiary of the right to require the performance of Guaranteed Obligations ("Permitted Assignment"). Guarantor acknowledges that if this Guarantee is assigned by Seller in connection with a Permitted Assignment, then this Guarantee shall continue in full and effect and Guarantor shall continue to guarantee the performance of Guaranteed Obligations to Seller's assignee on the terms of this Guarantee and, if requested by Seller, shall enter into a guarantee on the same terms as this Guarantee directly with Seller's assignee. Guarantor also acknowledges that if the Contract is assigned by Buyer in

accordance with the provisions of the Contract, then this Guarantee shall continue in full force and effect and Guarantor shall continue to guarantee the performance of Guaranteed Obligations in accordance with the Contract by Buyer's assignee on the terms of this Guarantee.

**Applicable law and Arbitration.** This Guarantee, and any non-contractual obligations arising out of or in connection with this Guarantee, shall be governed by and construed in accordance with the laws of England and Wales notwithstanding the choice of law rules of any jurisdiction and determined without reference to the principles of conflicts of laws. Any dispute arising out of or in connection with this Guarantee, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this Clause.

The number of arbitrators shall be three. Each Party shall nominate one arbitrator and the two appointed arbitrators shall appoint a third arbitrator who shall serve as the chairman of the arbitration tribunal. Unless otherwise agreed by the Parties, all arbitrators shall be fluent in English and have experience in acting as an arbitrator.

The seat, or legal place, of arbitration shall be London, England.

The language to be used in the arbitral proceedings shall be English.

The Parties undertake to keep confidential all awards in any arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain -

save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

By agreeing to arbitration in accordance with this Clause, the Parties agree that no competent court in any relevant jurisdiction will have the power to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of the arbitration proceedings or the enforcement of any award.

Parties shall submit documents in English. Documents submitted in a language other than English shall be translated into English at the expense of the Party submitting the documents. Each Party shall have the right, at its sole cost and expense, to have an interpreter attend the arbitration hearings if it so chooses.

No Waiver; Remedies. No failure on the part of a Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other of further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by the applicable law.

Validity. This Guarantee shall be deemed effective for all purposes as of the Signing Date. Except for any claim notified before the expiry date, this Guarantee and Guarantor's liability to Seller hereunder shall continue and remain in full force and effect until the date on which all the guaranteed sums have been paid in full and all of Buyer's obligations under the Contract have been performed in full.

Until Guarantor's liability to Seller expires pursuant to this Guarantee, Guarantor shall not enter into any transaction which would make this Guarantee unenforceable, delay its enforcement or have an adverse effect on its enforceability, including without limitation any agreement which prohibits Guarantor from performing its obligations hereunder, without Seller's prior written consent to such transaction that specifically references to this Clause 10.

Amendments. A written Amendment executed solely by Guarantor may extend the termination date of this Guarantee. No other amendment of this Guarantee shall be effective unless in writing and signed by Guarantor and Seller. Neither waiver of any provision of this Guarantee nor consent to any departure by either Party from the terms hereof shall in any event be effective unless such waiver shall be in writing and signed by other Party. Any such waiver shall be effective only in the specific instance and for specific purpose for which it was given.

Severability. Each provision of this Guarantee is severable and distinct from the others. Seller and Guarantor intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by applicable law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment of rule of applicable law, it shall to that extent be deemed not to form part of this Guarantee but (except to that extent in the case of that provision) it and other provisions of this Guarantee shall continue in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired.

Headings, References and Usage of Terms. This Guarantee is executed in the English language. All capitalised terms used, but not defined, in this Guarantee but defined in the Contract shall have the respective meanings set forth in the Contract. In this Guarantee, the singular shall include the plural and vice versa. The terms "herein" and "hereunder" and similar terms shall be interpreted to refer to this entire Guarantee.

The Guarantor's warranties and representations. The Guarantor warrants and represents that:

The Guarantor is a company duly organised, validly existing and in good standing under the laws of the country of its incorporation. The Guarantor has all requisite corporate power and authority to carry on its business as presently conducted and as proposed to be conducted. Guarantor is duly qualified to transact business and is in good standing in each jurisdiction in which it operates its business;

All corporate action required to be taken by Guarantor in order to authorise Guarantor to enter into this Guarantee, and to perform its obligations hereunder, has been taken. All action on the part of the officers of Guarantor necessary for the execution and delivery of this Guarantee, the performance of all obligations of Guarantor under this Guarantee have been taken. This Guarantee, when executed and delivered by Guarantor, shall constitute valid and legally binding obligations of Guarantor, enforceable against the Guarantor in accordance with its terms;

No consent, approval, order or authorisation of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority is required on the part of Guarantor in connection with execution, delivery or performance of this Guarantee;

There is no claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or currently threatened that questions the validity of the Guarantee or the right of Guarantor to enter into it or perform its obligations under it; and

Guarantor is not in violation or default (i) of any provisions of its charter or by-laws (as a case may be), (ii) of any instrument, judgment, order, writ or decree, (iii) under any note, indenture or mortgage, or (iv) under any lease, agreement, contract or purchase order to which it is a party or by which it is bound, or of any provision of federal or state statute, rule or regulation applicable to Guarantor, the violation of which would have a material adverse effect on Guarantor. The execution, delivery and performance of the Guarantee and the consummation of the transactions contemplated by the Guarantee will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, a default under any such provision, instrument, judgment, order, writ, decree, contract or agreement.

IN WITNESS WHEREOF this Guarantee has been duly executed and irrevocably delivered as a deed on the Signing Date.

Guarantor

\_\_\_\_\_

[ ]

on behalf of [ ]  
appropriate for Guarantor

[review deed formalities and add signature blocks for Witness / Director / Secretary as