

**SIBUR INTERNATIONAL GMBH**

**BUSINESS TERMS**

**OF SALES OF HYDROCARBONS**

**FOR DELIVERIES BY**

**RTC (RAILWAY TANK-CAR)/RAILWAY WAGON(S), AUTO TRUCK**

**FCA, CPT, DAP, DDP**

**(BT\_BU 10\_R&A)**

**January 01, 2015**

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### **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. The quality of the Goods shall be confirmed by a Certificate of Quality issued by Seller or by the Manufacturer of the Goods, and/or the Inspector’s Report (as the case may be).
- 2.2. 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 2.3. In the event either Party does not agree with the results of the test(s) made by the Seller in accordance with this Section 2.2, the quality inspection shall be performed by an independent Inspector in accordance with Section 2.3. hereof.
- 2.3. Unless otherwise agreed by the Parties in the Contract, the quality inspection shall be performed at the Place of Shipment (applicable for FCA, CPT), or the Place of Destination (applicable for DAP, DDP) by an Inspector of an internationally recognised inspection company mutually agreed between the Parties and in accordance with the standard practice (i) at the place of the inspection or (ii) of the Inspector if there is no standard practice at the place of inspection.
- 2.4. 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.

- 2.5. 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.
- 2.6. The costs of the inspection (under Section 2.3) 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.
- 2.7. 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.

#### 2.8. 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 Place of Shipment (applicable for FCA, CPT), or the Place of Destination (applicable for DAP, DDP) by an Inspector of an internationally recognised inspection company mutually agreed by the Parties and in accordance with the standard practice (i) at the place of the inspection or (ii) of the Inspector if there is no standard practice at the place of inspection, . The quantity inspection of liquid Goods shall be as per the volume in a vacuum (unless the Contract explicitly provides for measurement at atmospheric pressure). The Transport Document quantity of the Goods shall be based on the Inspector's Report. The Inspection of the other categories of Goods shall be made upon prior written request of Buyer, Seller shall be notified of the inspection at least seven (7) Days in advance and Buyer shall provide Seller's representative opportunity to be present in order to observe the inspection.
- 3.2. If the Inspector determines that the quantity of the Goods does not conform with the quantity stated in the Transport Document for more than one half of one per cent (0.5 %) (the "Permitted Deviation") the Goods shall be accepted by the value defined by the Inspection with off-loading reports (acts) being issued and signed by such Inspector. 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 within the Permitted Deviation. Buyer shall submit all claims concerning quantity deviation in excess of one half of one per cent (0.5 %) in accordance with Section 3.10 hereof.
- 3.3. Unless the Contract provides otherwise, the Planned Contract Quantity and/or the Planned Monthly Quantity specified (as appropriate) 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 for the purposes of the Contract shall be equal to the quantity specified in the Transport Document.
- 3.5. The Actual Contract Quantity shall be the basis for determining the Total Goods Value.
- 3.6. The Actual Contract Quantity or the Actual Monthly Quantity (as appropriate) may deviate by not more than ten per cent (10 %) of the Planned Contract Quantity or the Planned Monthly Quantity respectively without giving rise to any right of Buyer to claim that Seller must meet the Planned Contract Quantity or the Planned Monthly Quantity specified in the Contract, and/or take back any surplus quantities to the Planned Contract Quantity or the Planned Monthly Quantity specified in the Contract as appropriate.
- 3.7. 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.

3.8. If Buyer orders less Goods than the Planned Monthly Quantity or the Planned Contract Quantity for a relevant period, Seller at its own discretion may either: (i) agree to deliver the outstanding quantity of the Goods in the next period (the delivery schedule shall be decided by Seller, however, Buyer's suggestions may be taken into account); or (ii) request the payment of ten per cent (10%) of the Price of the outstanding quantity of the Goods as liquidated damages of Seller (the Parties agree that the above amount is genuine pre-estimate of liquidated damages Seller will suffer if Seller delivers the Goods less than the Planned Monthly Quantity or the Planned Contract Quantity. Without prejudice to the above, however, if the amount of actual damages exceeds the above amount, the right of Seller to claim the actual amount of damages shall not be limited). Seller shall notify Buyer the option it chooses to proceed in writing, however, the failure to notify will not evidence the waiver of Seller's rights described above.

### 3.9. 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 has the option to either: (i) meet the Planned Contract Quantity or the Planned Monthly Quantity (as the case may be) in further Shipments, or (ii) repay to Buyer (pay back, return) the Prepayment paid by Buyer for the Goods not delivered within three (3) Days after the execution of the respective Verification Act (option (ii) is not applicable to post payment of the Goods); or (iii) apply such amount of the Prepayment paid by Buyer for the Goods not delivered to the further Shipments (if applicable). 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 the 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 option shall have the right to either: (i) 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 1 (one) Day after Delivery Date of the respective Goods. The payment for such Goods shall be made by the 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.

### 3.10. 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 between the dates (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

The risk of and title to the Goods shall transfer from Seller to Buyer at the Delivery Date, unless otherwise provided in the Contract. The Parties agree that the transfer of risk of loss or damage, and title to, the Goods is not conditional upon delivery of the Transport Document or any other documentation. Neither the time, method, nor the place of payment, method of transportation, form of Transport Document, manner of consignment nor place of acceptance of the Goods shall alter the foregoing.

### 4.3. Seller's right to refuse

Seller may refuse to deliver the Goods at any time if:

- a) delivery under an intended or customary route to the Place of Destination becomes impracticable for any reason whatsoever beyond Seller's control;
- b) the cost of delivery to the Place of Destination (including Taxes) and/or insurance, if applicable, has significantly increased (more than by twenty per cent. (20%) within one (1) month), which at the time of entry into the Contract could not have been reasonably foreseen by Seller ; and/or
- c) importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such the Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
- d) the country, state, territory or region at which the Place of Destination becomes affected by Sanctions.
- e) Should Seller agree to undertake or complete the delivery under an alternative route or at an alternative Place of Destination nominated by Buyer and accepted by Seller (which acceptance shall not be unreasonably withheld), or under changed circumstances as the case may be, Buyer shall reimburse Seller for any additional costs and/or expenses incurred by Seller.

#### 4.4. Customs formalities

- a) If the Goods shall be exported from the customs territory of the Russian Federation, Buyer shall ensure the departure of the Goods from the territory of the Russian Federation within ninety (90) Days from the date when the customs procedures for export are completed on the territory of the Russian Federation (date of the stamp "Clearance allowed" in CCD) and at Seller's request provide Seller by e-mail or fax with copies of the Transport Document with legible notes made by the destination railway station and/or CMR with legible notes of border crossing.
- b) If Buyer does not comply with this Section 6.4 Buyer shall pay Seller liquidated damages amounting to twenty-two and one-half per cent. (22.5%) of the Total Goods Value.
- c) The Parties expressly agree that the liquidated damages provided in subsection 4.4 (b) above reflect a good-faith estimate of Seller's losses in the event if the documents required under subsection 4.4 (a) are not provided to Seller within the specified period.

#### 4.5. FCA

***This Section 4.5 applies to Contract providing FCA as delivery basis.***

##### 4.5.1. Delivery Date

The Delivery Date shall be the moment when:

- i. the Seller's Truck(s), loaded with the Goods, arrive(s) to the Place of Destination (or as close as possible to the Place of Destination if access to the Place of Destination is restricted) and stand ready for unloading by Buyer's representative or the Carrier; or
- ii. the Seller's RTC/Railway wagon(s), loaded with the Goods, arrive(s) at the Place of Shipment (or as close as possible to the Place of Shipment if access to the Place of Shipment is restricted) and the Notice of Arrival ("NOA") is given to the Carrier or the Buyer's representative at the place of unloading.
- iii. the Goods have been loaded at the Place of Shipment on the means of Transport provided by the Carrier nominated by the Buyer – if the delivery is at the Manufacturer or warehouse or storehouse.

##### 4.5.2. Delivery Terms

- a. The unloading of the Goods is Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by Seller, except for if delivery is at the Manufacturer or warehouse or storehouse in which case the loading of the Goods shall be Seller's responsibility and risk.
- b. Buyer provides Seller with full and timely information about the Place of Destination and the Carrier, including any special location access instructions and all contact information of the Carrier. Such information shall be provided to Seller via e-mail, facsimile or by other means agreed upon by the Parties, at least five (5) Business Days prior to the approximate date of dispatch of the relevant Shipment by Seller. Such information can be changed by the Buyer through written notification to the Seller and no later than 1 (one) Business Day before such date of dispatch of the Shipment.

The information shall include:

- i. the name of the Carrier (person or entity);
- ii. documentation evidencing the Carrier's rights to accept and carry the Goods (should be presented by the Carrier at the Place of Destination);
- iii. the identity, location and address of the Place of Destination with instructions for access to the Place of Destination; and
- iv. any other information requested by Seller.

Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the transportation and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of the Contract. Any delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of the Contract by the Seller.

- c. The Parties shall obtain any licences, permits and documents which are necessary for successful import and export clearance of the Goods.
- d. Seller shall timely obtain export permits.
- e. Buyer shall timely obtain import permits .
- f. All delays due to absence of custom clearance shall be at the expense of the Party in Default.

#### 4.5.3 Taxes prior to delivery

All taxes, customs and other duties and fees incurred as a result of the conclusion and execution of the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by Seller.

#### 4.5.4 Taxes after delivery

Unless otherwise expressly agreed by the Parties in the Contract, Buyer shall pay all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the Contract if any, after delivery.

#### 4.6 CPT

***This Section 4.6 shall apply to Contracts providing CPT as delivery basis.***

##### 4.6.1 Delivery Date

- i. The Delivery Date shall mean the date when the Goods are loaded in Seller's Truck(s) to be dispatched to the Place of Destination named by the Buyer, which date is stated in the stamp of the CMR at the Place of Shipment.
- ii. in RTC / Railway wagon(s) to be dispatched to the Place of Destination named by Buyer which date is stated in the stamp of the Railway bill at the Place of Shipment.

##### 4.6.2 Delivery terms

- i. Discharging and unloading of the Goods at the Place of Destination is Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by Seller.
- ii. Buyer shall provide Seller with full and timely information about the Place of Destination, including any special location access instructions. Buyer shall provide such information to Seller via facsimile or by other means agreed upon by the Parties, at least five (5) Business Days prior to the approximate date of dispatch of the relevant Shipment by Seller.

The information must include:

- i. the identity, location and full address of the Place of Destination, with instructions for access to the Place of Destination;
- ii. all instructions regarding customary documentation which may be required at the Place of Destination (if any); and
- iii. any other information requested by Seller.

Should Buyer fail to timely submit such information, Seller shall not be required to initiate the transportation and delivery of the Goods, which will not constitute a waiver of Buyer's breach of Contract. Any delays in delivery of the Goods which result from inaccuracies of information provided are deemed to be the sole fault of Buyer.

##### 4.6.3 Licenses and clearances

- i. The Parties shall obtain any licences, permits and documents which are necessary for successful import and export clearance of the Goods.



- ii. Seller shall timely obtain export permits .
- iii. Buyer shall timely obtain import permits.
- iv. All delays due to absence of custom clearance shall be at the expense of the Party in Default.

#### 4.6.4 Taxes prior to delivery

All taxes, customs and other duties and fees incurred as a result of entry into the Contract which are levied on the Goods prior to delivery or required for the dispatch of the Goods outside the customs territory of the Russian Federation will be paid by Seller.

#### 4.6.5. Taxes after delivery

Unless otherwise expressly agreed by the Parties in the Contract, all taxes, customs and other duties and fees incurred as a result of or in connection with the conclusion and execution of the Contract if any, after delivery will be paid by Buyer.

#### 4.7. **DAP**

***This Section 4.7 shall apply to Contracts providing DAP as delivery basis.***

##### 4.7.1 Delivery Date

- a) Delivery Date shall mean the moment when the Goods arrive at the Place of Destination ready for unloading.
- b) The time of the Goods' arrival shall be indicated in the Transport Document. If the Transport Document does not specify the exact time of the Goods' arrival, it is presumed that the Goods are ready for unloading:
  - i. for the delivery by railroad (RTC/Railway wagon(s)) – as of the scheduled time of arrival of the relevant train (unless the moment is specified in Seller's/Carrier's notice to Buyer); and
  - ii. for the delivery by road (Truck(s)) – as of the moment of the Goods arrival specified in Seller's/Carrier's notice to Buyer.
- c) If Buyer has any claims regarding the actual time of the Goods' arrival, Buyer must notify Seller within two (2) Days following the respective delivery, otherwise Buyer is deemed to have waived all objections as regards the arrival time to the fullest extent allowed under applicable Law.

##### 4.7.2 Delivery terms

The Goods shall be unloaded at the Place of Destination at the Buyer's risk and expense. If the unloading is included in the price of the transportation under the agreement executed by and between Seller and the Carrier, Seller may nevertheless invoice Buyer relevant unloading expenses.

##### 4.7.3 Licences and clearances

Seller and Buyer shall provide each other with reasonable support in acquisition of all appropriate export and import licences and clearances; provided that the other Party shall reimburse all and any costs and expenses arising out of and/or in connection with such support.

##### 4.7.4 Import Taxes and customs requirements

- a) Buyer shall pay and be responsible for all taxes, customs and other duties and fees incurred as a result of entry into the Contract which are levied on the Goods in the country of delivery.
- b) If the Buyer fails to pay or perform the above when due, the risk shall pass to the Buyer as of the date when such taxes, customs and other duties and fees are due. If the Buyer delays the fulfilment of its obligations under this Section for more than two (2) Days, the Seller is entitled, but not obliged: (i) to make any relevant payments on its own; or (ii) if the Goods are not released in the country of delivery, to place the Goods in the customs warehouse (in which case the moment of placing the Goods shall be the Delivery Date, any further costs will be at the Buyer's expense).

- c) Seller's rights under this subsection 4.7.4 shall be without prejudice to the Seller's other rights under the Contract and/or applicable Law. In addition, Buyer shall indemnify Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by Seller as a result of Buyer's any breach of obligations under this Section.

#### 4.8. DDP

***This Section 4.8 shall apply to Contracts providing DDP as delivery basis.***

##### 4.8.1 Delivery Date

- a) Delivery Date shall mean the moment of the Goods' arrival at the Place of Destination ready for unloading.
- b) The time of the Goods' arrival shall be indicated in the Transport Document. If the Transport Document does not specify the exact time of the Goods' arrival, the Goods shall be deemed to have arrived for unloading:
- i. for the delivery by railroad (RTC/ Railway wagon(s)) – as of the scheduled time of arrival for a relevant train (unless the moment is specified in Seller's/Carrier's notice to Buyer); and
  - ii. for the delivery by road (Truck(s)) – as of the moment of the Goods arrival specified in Seller's/Carrier's notice to Buyer.
- c) If Buyer has any claims regarding the actual time of the Goods' arrival, Buyer must notify Seller within two (2) Days following the respective delivery, otherwise Buyer is deemed to have waived all objections as regards the arrival time to the fullest extent allowed under applicable Law.

##### 4.8.2 Delivery Terms

- a) The unloading of the Goods at the Place of Destination shall be at Buyer's risk and expense, unless the expenses are attributed to Seller in the Contract.
- b) If any licences, clearances and other customs requirements or Taxes in the country of import could be performed, arranged or paid only by Buyer or on Buyer's side, Buyer shall (i) inform Seller accordingly; and (ii) perform, arrange and pay the same in due time. Seller shall compensate Buyer for documented direct expenses in relation thereto, provided that Buyer furnishes Seller with primary accounting documents substantiating Buyer's costs such as acts, invoices, reports, etc. If Buyer fails to perform under this Section, any adverse consequences for Seller, Carrier and/or the Goods, including (i) delayed delivery and (ii) any related penalties, fines, Taxes, costs, expenses will be at Buyer's cost and risk. Buyer shall indemnify Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by Seller as a result thereof.

##### 4.8.3 VAT

- a) If Buyer is a company registered in the EU, Buyer shall provide Seller with its VAT Identification Number as of the Signing Date of the Contract.
- b) If:
- i. Buyer is a company registered in the EU;
  - ii. Buyer wishes to receive a VAT-exempt invoice; or
  - iii. Buyer purchases the Goods from Seller on the DDP basis at the Place of Destination in a certain country, picks up the Goods itself and moves the Goods out of such country;

Buyer shall within two (2) weeks from the Delivery Date provide Seller with copies of the Transport Document, confirming that the Goods have been taken out of the country where they have been purchased.

If the Transport Document (referred to in Section 5.1) is not provided on time, Seller shall have the right to issue a credit note to the original VAT-exempt invoice and issue a new invoice, increased by the amount of VAT to be paid by Buyer, within seven (7) Days after the date of the invoice.

## PARAGRAPH V TRANSPORTATION

### 5.1. General conditions of transportation

- a) The Transport Document hereunder and the Contract shall be:
- Railway bill (or "RWB" or "Rail way bill" or "CIM consignment note") – for delivery by RTC/Railway wagon(s);
  - CMR or TIR (or consignment note) or TIR – for delivery by Truck(s).
- b) Delivery of the Goods shall be immediately followed and witnessed by presentation by Seller to Buyer or the Carrier, or Buyer's representative, of a valid Transport Document. Such document shall be signed and marked by Seller and the Carrier at the place of loading and shall be deemed conclusive proof of delivery by Seller.
- c) Buyer warrants that the Place of Destination is (i) reachable by the agreed means of transport and (ii) suitable and equipped, if necessary, for unloading of the Goods.

### 5.2. Defective RTC/Railway wagon(s) and/or the Truck(s)

If Buyer (or Buyer's authorised representative, or Buyer's Carrier, or any other party on Buyer's side or for whom Buyer bears responsibility) returns any RTC/Railway wagon(s) and/or the Truck(s) defective, unrepaired, and/or damaged, and/or unclean, and/or not fully unloaded, and/or otherwise unfit for the purposes, which such Truck is usually used for, the Buyer shall reimburse all and any costs and expenses of Seller arising out of or in connection with such Defective RTC/Railway wagon(s) and/or the Truck(s).

### 5.3. Special conditions of transportation by RTC/railway wagon(s)

***This Section 5.3. shall apply Contracts specifying delivery by RTC/Railway wagon(s).***

- 5.3.1. Where Seller expressly or impliedly provides Buyer with a range of dates of dispatch of the Goods within the Shipment period or arrival of RTC / Railway wagon(s) loaded with the Goods, dispatch may be performed on any of the dates provided.
- 5.3.2. No later than three (3) Business Days after dispatch of the Goods by RTC / Railway wagon(s) Seller shall provide by electronic mail or facsimile the Buyer with all information necessary for the unloading of the Goods:
- a) the Contract reference number;
- b) Railway bill reference number(s);
- c) RTC / Railway wagon(s) identification number(s);
- d) description of the Goods and their Railway bill quantity.
- 5.3.3. Buyer may at its own discretion provide the Seller with written instructions for unloading of the Goods by Buyer. In case such information is provided, Seller may undertake to cause his Carrier or his representatives / employees to follow such instructions to the extent practicable, provided that Seller shall be under no obligation to provide such assistance.
- 5.3.4. The Buyer warrants that the railway zone at Place of Destination shall be safe and well suited for delivery of the Goods. The Buyer shall be liable for and shall indemnify Seller in respect of any loss or damage, including but not limited to any liability for damage to the RTC / Railway wagon(s), surroundings, environment and people, additional costs or expenses arising out of and in relation to any failure of Buyer to nominate a safe railway zone at Place of Destination.
- 5.3.5. Notice of Arrival

- a) Buyer shall obtain the Notice of Arrival of the Goods at the Place of Destination station ("NOA") from the railway station's authorised authorities using Buyer's available contact information in accordance with customary rules at the railway station.
- b) Buyer shall ensure the Carrier's timely presence at the Place of Destination at the Delivery Date for unloading of the Goods.
- c) Carrier's absence at the Place of Destination shall be without prejudice to Seller's successful delivery of the Goods for the purpose of the Contract.

#### 5.3.6. Railway transportation agreement conditions

- a) Seller may arrange transportation in accordance with the railway transportation agreement, executed by and between Seller and the Carrier. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include the provision that where, at any time:
  - i. importation of the Goods at the unloading railway zone is prohibited under the laws of the country in which such Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
  - ii. the country, state, territory or region at which the Place of Destination is located becomes a restricted railway zone, the Goods shall be unloaded at an alternative railway zone nominated by Buyer that is not subject to any such prohibition and that is accepted by Seller (which acceptance shall not be unreasonably withheld).
- b) In the case referred to subsection 5.3.6 (a) above, such alternative railway zone shall be deemed to be the Place of Destination stipulated under the Contract for the relevant Shipment and all extra expenses (if any) involved in the RTC / Railway wagon(s) reaching such alternative Place of Destination shall be for Buyer's account.

#### 5.3.7. Buyer's Right to Require

Buyer has the right to request extra services in relation to the Goods at the Place of Destination which services shall not be deemed to be included in the Total Goods Value. The Parties determine the scope of such services by mutual written agreement no later than three (3) Days before Estimated Time of Arrival of the RTC/Railway wagon(s). Where Buyer, by written instruction to Seller, requests that such services should be provided, then Buyer shall indemnify and hold Seller harmless against any liability, loss, damage, delay and/or expenses that Seller may incur by reason of complying with Buyer's request. The indemnity provided by Buyer to Seller shall be not less than the liability Seller incurs to RTC / Railway wagon(s) owners in order to comply with Buyer's request.

#### 5.3.8. Damage to RTC and Wagons

- a) It is presumed that the RTC/Railway wagon(s) arrives at the Place of Destination for unloading in good condition, unless Buyer has promptly (but not later than one (1) Day after the RTC/Railway wagon(s) arrival) informed Seller of such defects. If the defects are revealed later than the above mentioned term, Buyer shall pay repair costs or expenses of the Carrier or Seller within five (5) Business days upon Seller's or Carrier's respective invoice.
- b) Within three (3) Business days prior to dispatch of the respective Shipment, Buyer shall provide Seller with the Transportation information, including the delivery period, reference to the number and the Signing Date of the Contract, quantity of the Goods, full name and address of the consignee, railway code of the consignee, name of the destination railway station, railway station's confirmation to accept the Goods.
- c) Upon prior written request of Buyer, Seller shall arrange for plans (the "Plans") of transportation of the Goods by rail. The procedure and dates for issuance of the Plans shall be regulated by the applicable local laws and regulation.
- d) Should the Plans be not fulfilled, through the fault of either of the Parties, the Party at fault shall be liable for all damages or fines imposed by the railway(s).

- e) In case of impossibility to unload the Goods due to any technical reasons during periods indicated in the Contract and/or hereof, Buyer shall notify Seller accordingly (by telegram, fax, mail or email) within (twenty-four) (24) hours from the moment of the Rail tank-car arrival to the station of destination.
- f) In case of the Rail tank-car damage caused within the time period of its use by Buyer or Buyer's counterparties, Buyer shall immediately inform Seller about the occurrence of such event and recover losses incurred due to Rail tank-car damage within sixty (60) Days from the date of Seller's demand. In case the Rail tank-car is lost within the time period of its disposal of Buyer or Buyer's counterparties, Buyer shall pay to Seller the amount that covers market value of a Rail tank-car of identical model and year of manufacture including costs incurred for putting it into operation. A Rail tank-car is considered lost if it is not returned to Seller within one hundred and twenty (120) Days from the date of the Goods dispatch.
- g) If Buyer redresses the Goods or cannot accept the Goods, Buyer shall notify Seller of these changes in writing not later than three (3) Business Days before the planned date of dispatch. All expenses of Seller (including fines and penalties), caused by Buyers' actions. The Parties shall endeavour to mitigate losses.
- h) Neither Buyer nor the Buyer's consignee shall redirect Rail tank-cars without Seller's prior Consent. Seller is entitled to charge the Buyer (the Buyer's consignee) for unauthorized redirection at the rate at least fifty-two (52) EUR (unless the customary rules of the respective railway station provide otherwise) for each Day of usage of each Rail tank-car. Buyer shall ensure that each Rail tank-cars is unloaded to a level of seven-tenths of one per cent (0.7%) bar, if applicable. Buyer and/or Buyer's consignee shall return the empty Rail tank-cars in acceptable technical and commercial condition with the sealed documents required for the proper return of the Rail tank-cars to the initial railway loading station or any other station as per Seller's instructions.
- i) Buyer shall reimburse to Seller all documented costs and expenses caused by the improper completion of the documents mentioned in subsection 5.3.8 (h) hereof, if such results in a Rail tank-car arriving at the wrong railway station. If such documents for the Rail-tank cars return are completed in accordance with Seller's instructions, Buyer shall not be responsible for their return emptied to the wrong railway station.
- j) Seller shall advise its instructions to Buyer for empty Rail tank-cars by written notice not later than the arrival of full Rail tank-cars to the Place of Destination (the date of the Goods' delivery). Otherwise Buyer shall not be held liable for possible costs which may arise due to absence of instructions and/or improper completion of the return Railway bill for return of empty Rail tank-cars. After the Rail tank-car is unloaded, Buyer shall install plugs at corner and control valves to seal the neck bonnet and fix it by all bolts. Buyer shall ensure that the bonnet is not removed from the neck flange is not allowed. Seller is entitled to charge Buyer with incurred losses for the plugs at corner and control valves of the Rail tank-car not being installed at the place of unloading.

#### 5.4 Special Conditions of transportation by Truck(s)

***This Section 5.4. shall be applied when the Contract specifies delivery by road (Truck(s)).***

5.4.1. Where Seller expressly or impliedly provides Buyer with a range of dates within an agreed period of delivery or arrival of Truck(s) loaded with the Goods, delivery of the Goods may be performed on any of the dates provided.

No later than one (1) Day after dispatch of the Goods by Truck(s) Seller shall provide Buyer by e-mail or facsimile with all information necessary for unloading of the Goods:

- (a) Contract reference number;
- (b) CMR consignment note reference number(s);
- (c) Truck identification number(s);
- (d) description of the Goods and their CMR consignment note quantity;
- (e) Estimated Time of Arrival of Truck(s); and
- (f) number of issued CMR consignment notes.

5.4.2. Seller has the right to substitute any Truck(s) identified under subsection 5.4.1(c) and provide Buyer with new information not later than two (2) Days before the Estimated Time of Arrival of the Truck(s). Such substitution shall always be subject to the requirements that Truck(s) of a similar size be provided and that the quantity to be loaded shall not, without prior written Consent of the Buyer, differ by more than five per cent. (5%) from the quantity specified in the present Contract.

- 5.4.3. Buyer may at its own discretion provide the Seller with written instructions for unloading of the Goods by Buyer. In case such information is provided, Seller may undertake to cause his Carrier or his representatives / employees to follow such instructions to the extent practicable; provided that Seller shall be under no obligation to provide such assistance.
- 5.4.4. Buyer warrants that the Place of Destination shall be safe and well suited for delivery of the Goods. Buyer shall be liable for and shall indemnify Seller of any losses or damage, including but not limited to any liability for damage to Truck(s), surroundings, environment and people, additional costs or expenses arising out of and/or in relation to any failure of Buyer to nominate a safe Place of Destination.
- 5.4.5. Buyer shall have a representative on-time and present at the Place of Destination at the Delivery Date for unloading of the Goods, but the presence of such a representative shall not be a requirement for Seller's delivery of Goods under the Contract.
- 5.4.6. Truck transportation agreement conditions
- i. Seller may arrange transportation of the Goods in accordance with the Truck transportation agreement(s) executed by and between Seller and the Carrier. Without prejudice to the generality of the foregoing, for the purposes of the Contract such agreement shall be deemed to provide that if:
- a) importation of the Goods at the Place of Destination is prohibited under the laws of the country in which such Goods were produced, or by regulations, rules, directives or guidelines applied by the government of that country or any relevant agency thereof; and/or
- b) the country, state, territory or region at which the Place of Destination is located becomes a restricted zone, the Goods shall be unloaded at an alternative location nominated by Buyer that is not subject to any such prohibition and that is accepted by Seller (which acceptance shall not be unreasonably withheld).
- ii. The alternative Place of Destination referred to in subsection 5.4.6 (i) above shall be deemed to be the Place of Destination stipulated under the Contract for the respective Shipment and Buyer shall pay all extra expenses (if any) involved in the Truck's reaching such alternative Place of Destination.
- 5.4.7. Buyer's right to require
- Buyer may request, by written instruction to the Seller, extra services in relation to the Goods at the Place of Destination which shall be included in the Total Goods Value. Such services, if any, shall be rendered under a written agreement entered into no later than three (3) Days before the Estimated Time of Arrival of the Truck(s). Where Buyer requests such services. Buyer shall indemnify Seller and hold it harmless against any liability, loss, damage, delay or expenses that Seller may sustain by reason of complying with Buyer's request. Buyer's indemnification of Seller shall be no less than the liability of Seller to the Truck owner in connection with Buyer's request.

## PARAGRAPH VI SHIPMENT PERIOD

- 6.1. The Shipment Date shall be specified in the Transport Document.
- 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.
- 6.3. **Transportation information**
- a) If the Goods' transportation is arranged by Seller, Buyer shall submit to Seller the Transportation information required for the transportation and delivery of the Goods via facsimile, or by other means agreed upon by the Parties at least five (5) Business Days before the first Day of laytime of each Shipment.

- b) The Transportation information shall include:
- all instructions regarding customary documentation which may be required at the Place of Destination;
  - the identity of the Terminal(s) at the Place of Destination, with instructions to enable the Carrier to prepare and submit necessary information to the customs or border authorities; and
  - any other documents requested by Seller.
- c) Should Buyer fail to timely submit the Transportation information, Seller may at its sole discretion elect to extend the time for delivery of the Goods which, if so extended, will not constitute a waiver of the Buyer's breach of the Contract.
- d) Seller shall send to Buyer the details of the dispatched Shipment via e-mail, facsimile or by other means agreed upon by the Parties within five (5) Business Days after dispatch of the Goods.
- e) Any delays in loading the Goods at the Place of Shipment (including where Seller is entitled to delay delivery of the Goods) or in unloading the Goods at the Place of Destination caused by Buyer's failure to provide any necessary Transportation information, or as a result of omissions or inaccuracies in the Transportation information provided, will be for the Buyer's account. Buyer shall indemnify Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by Seller as a result thereof.

## PARAGRAPH VII

### LAYTIME

- 7.1. The time allowed to Buyer for the loading or unloading of the Goods deliverable under the Contract shall be as set out in the Contract.
- 7.2. Sundays and Holidays shall be included, unless unloading on the Sunday or Holiday in question is prohibited by Law or regulation or custom at the unloading Terminal and/or unloading railway zone.

#### 7.3. LAYTIME – delivery by railway (RTC/Railway wagon(s))

*This Section 7.3 shall apply to Contracts specifying delivery by railway (RTC/Railway wagon(s))*

- a) If the amount of permitted laytime is not set out in the Contract, laytime shall be twenty four (24) hours, unless otherwise expressly mutually agreed by the Parties in writing.
- b) Laytime shall commence: one (1) Day after the relevant train or Truck has arrived at the Place of Destination. For the purpose of calculating of the unloading time, unloading shall be deemed to have been completed upon removal of last item of the Goods from the last RTC/Railway wagon(s).
- c) The train will be deemed to have arrived according to the schedule (the exact time of arrival, when required, can be determined from the records of the relevant railway station). If the train has not released the railway track within the laytime period or promptly thereafter through no fault of Seller (including, without limitation, where Buyer is required to unload the Goods and has failed to unload them in a timely manner) and this resulted in additional costs, expenses or losses for Seller, then Buyer shall reimburse to Seller all such costs, expenses and/or losses.

#### 7.4. LAYTIME – delivery by road (Truck(s))

*This Section 7.4. shall be applied when the Contract specifies delivery by road (Truck(s)).*

- a) If the amount of laytime permitted is not set out in the Contract, laytime shall be six (6) hours, unless otherwise expressly mutually agreed by the Parties in writing.

- b) Laytime shall commence three (3) hours after the relevant Truck(s) has arrived at the Place of Destination. For the purpose of calculating of the unloading time, unloading shall be deemed to have been completed upon removal of last item of the Goods from the last Truck(s).
- c) The Truck(s) will be deemed to have arrived as of the time when the Carrier gives notice of such. Buyer may not refuse to certify receipt of such notice and the time of arrival shall be determined according to the Carrier's records. Buyer shall pay in full any expenses and costs of Carrier and/or Seller related to Buyer's refusal to certify any such notice.

#### PARAGRAPH VIII

##### DEMURRAGE

- 8.1. If the Goods are not loaded or unloaded (whichever is applicable) by the Party required to load or unload the Goods (whichever is applicable) within the time allowed in accordance with the laytime provisions hereof and/or the Contract, such Party shall pay to the other Party demurrage in respect of the excess time at the rate set out in the Contract.
- 8.2. Unless the Contract provides otherwise, no Force Majeure Event shall affect the running of laytime or vary or excuse the obligation to pay demurrage. The Party required to load or unload (as the case may be) the Goods shall indemnify the other Party for all demurrage costs resulting from delay in loading or unloading of the Goods by the Party required to load or unload the Goods.
- 8.3. Where no demurrage rate has been provided in the Contract, the demurrage rate for delivery by railway (RTC/Railway wagon(s)) shall be fifty two (52) EUR per each RTC/Railway wagon(s) (as may be amended from time to time) or for delivery by railway (RTC/Railway wagon(s) and Truck(s) as set out in the relevant agreement with the Carrier or, if the agreement does not specify a demurrage rate, at the market rate for the applicable means of Transport on the date of the completion of loading/unloading as shall be assessed by a mutually agreed independent broker. In the event that the Parties do not agree on a mutually acceptable broker, then each Party will appoint an independent broker and the two so appointed will appoint a third. The assessment that is the furthest away from the median will be discounted and the applicable demurrage rate will be the average of the two remaining assessments.
- 8.4. If the Party which shall load/unload the Goods (whichever is applicable) does not load/unload the Goods within the time allowed in accordance with the laytime provisions hereof and/or of the Contract such Party shall be liable for demurrage for any delay even if such delay caused by the fault or the failure of any of its counter party in the chain engaged such Party in default in frame of the performance of the Contract. In such cases the Party in default shall pay to the other Party all costs and expenses incurred by such other Party as a result thereof. For the avoidance of doubt, such Party in default shall remain liable to pay the other Party demurrage on the terms and conditions set forth in this Paragraph VIII and/or the Contract, irrespective of whether the demurrage claim is settled between the Party in default and any of its counter parties in the chain engaged by the Party in default in frame of the performance of the Contract.
- 8.5. Unless the Contract provides otherwise, demurrage claims must be addressed to the other Party within nine (9) months after the Delivery Date); however, it shall not be considered as time-barred by this Section. The Parties consider this period reasonable as they agree that customarily carriers make demurrage claims within approximately six (6) months after the Delivery Date.
- 8.6. Demurrage claims shall be considered within thirty (30) Days after their receipt by a relevant Party and shall be paid by the relevant Party not later than fourteen (14) Days after receipt of the other Party's invoice. If no substantiated comments have been given within the specified thirty (30) Days period, the claim shall be deemed accepted.

#### 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, the Seller shall prepare a provisional invoice based upon the pricing information available at the time and the Buyer shall make payment against the provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties in the Contract, be based upon 100 % (one hundred per cent) of the quantity specified in the Transport Document 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, the Buyer shall effect the payment of such outstanding balance within 3 (three) Business days of the receipt of the Seller's final invoice which shall be prepared as soon as practicable after all the relevant pricing information becomes available to the 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, the Seller shall issue the final invoice (which shall be prepared as soon as practicable after all the relevant pricing information becomes available to the Seller) and request the Buyer if (i) such difference between the amounts will be applied to the further deliveries if applicable or (ii) the Seller shall return such difference between the amounts within 3 (three) Business days of a mutually acceptable appropriate Verification Act being executed by the Parties. If the Buyer selects option (ii), then Verification Act shall be prepared and sent by the Seller to the Buyer within 2 (two) Business days upon receipt of the 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. Transport Document;

(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. Transport Document (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 suspense 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 pending laytime (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 2.8. 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, demurrage 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.

**ANNEX 1**

**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]**

**Signing** **Date** **[insert** **document** **date]**:  
**Place: [insert the place]**

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	

**BUSINESS TERMS**

- 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 [www.sibur-int.com](http://www.sibur-int.com).
- It is expressly agreed and acknowledged by the Buyer that the Business Terms are the integral part hereof and considered incorporated into this Contract.
- 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.
- 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.

The Buyer:

The Seller:

## ANNEX 2

## 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