

**SIBUR INTERNATIONAL GMBH**

**BUSINESS TERMS**

**SALES OF PACKAGING FILM**

**FOR DELIVERIES BY**  
**AUTO TRUCK AND SEA CONTAINERS**  
**FCA, CPT, DAP, DDP, CIF AND CFR**

**(BT\_BU 20\_A&C)**

## CONTENTS

<b>INTRODUCTORY PROVISIONS</b>	<b>3</b>
<b>PARAGRAPH I</b>	
Goods	3
<b>PARAGRAPH II</b>	
Quality	3
<b>PARAGRAPH III</b>	
Quantity	4
<b>PARAGRAPH IV</b>	
Delivery basis	6
<b>PARAGRAPH V</b>	
Transportation	11
<b>PARAGRAPH VI</b>	
Shipment period	15
<b>PARAGRAPH VII</b>	
Laytime	15
<b>PARAGRAPH VIII</b>	
Demurrage	16
<b>PARAGRAPH IX</b>	
Price	16
<b>PARAGRAPH X</b>	
Payment terms	17
<b>PARAGRAPH XI</b>	
Responsibilities of the parties	20
<b>PARAGRAPH XII</b>	
Duration	22
<b>ANNEX 1</b>	
Contract template	24
<b>ANNEX 2</b>	
Guarantee template	25

### **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 Conditions of SIBUR International GmbH for sales of petrochemicals and hydrocarbons ("General Conditions"). The version of the General Conditions 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 Conditions 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 Conditions, 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 Conditions; 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 Conditions, 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 Quality of the Goods shall comply with the requirements of the manufacturer's Technical specification for the Goods.
- 2.2 Claims concerning obvious (visible) defects of the Goods (which detection is possible by visual inspection of the Goods), poor packaging / labeling of the Goods can be made by the Buyer only upon acceptance of the Goods by the Buyer, and if the Buyer engages a Carrier, then upon acceptance of the Goods by the Carrier from the Seller (carrier engaged by the Seller). Claims for latent defects in quality of the Goods can be made by the Buyer within 180 (one hundred eighty) calendar days from the date of the Goods production.
- 2.3 Content and justification of the claim shall be supported by appropriate certificate signed by the Buyer (hereinafter referred to as the "Act"). The Act shall contain the following information:
- number, date of the Contract, number of Amendment to the Contract;
  - date of receipt of the Goods;
  - date of expertise;
  - the Goods name;
  - quantity of the Goods according to the invoice;
  - actual quantity of the Goods;
  - technical condition of the Goods.

The Act shall be accompanied by the samples of low-quality Goods as well as the following:

- copies of labels for each rejected roll of film;

- in case of the following defects: defect of winding, loose winding, "stars", "telescope", falling back, spool fall out, as well as film sags, the Buyer shall provide photos and videos of the defects together with the Act to the following e-mail address: client@biaxplen.ru;
  - in case of package integrity damage during transportation and rolls damage, the Buyer shall provide photos and videos of the defect and damage together with the Act (in this case photos shall be made in the truck body with its registration number), Certificate of Damage (Deterioration) of the Cargo (made by the Buyer's representative with participation of the carrier's representative and in the presence of the carrier's driver) and a Transport Document with a mark of the Buyer's and Carrier's representatives concerning the Certificate of Damage (Deterioration) of the Cargo.
- 2.4 The Seller shall examine a claim supported by samples of defective Goods, photo and video materials and with other information, documentation and materials specified in section 2.3 hereof, and respond to the Buyer within 15 (fifteen) working days from the date of a claim's receipt.
- 2.5 In case of the claim rejection by the Seller and disagreement of the Buyer with the Seller's decision, the Buyer has the right to make an examination of the Goods quality in an independent accredited laboratory, which shall be selected by written agreement of the Parties. Conclusion of the independent expert examination shall be final and indisputable, save for fraud or manifest error. If an independent expert confirms the Seller's conclusion that the Goods defects have occurred through no fault of the Seller, the expenses for such examination shall be borne by the Buyer. Otherwise, such expenses shall be borne by the Seller.
- 2.6 In case the quality of delivered Goods doesn't conform to contractual Technical specification due to the Seller's fault, provided always that it is not argued by the Seller, the Seller may, at its sole discretion, either:
- (i) reduce the price of the Goods proportionally (including by way of set-off its claims against the Buyer), or
  - (ii) replace the defective Goods with the Goods of proper quality, or
  - (iii) refund to the Buyer the amount paid for the defective Goods, provided that in such case the defective Goods shall be, at the Seller's option, returned to the Seller or utilized by the Buyer at the Seller's expense.

### PARAGRAPH III QUANTITY

- 3.1. 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 %) in Seller's discretion. 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. The Actual Contract Quantity shall be the basis for determining the Total Goods Value. 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 for 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.
- 3.2. 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.
- 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.

### 3.3. 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.

### 3.4. Claims.

Claims in respect of the amount of the Goods (number of pallets) can be made by the Buyer only upon acceptance of the Goods by the Buyer, and if the Buyer engages a carrier, then upon acceptance of the Goods by the carrier from the Seller (carrier engaged by the Seller). Claims for the Goods quantity (weight) in each roll can be made not later than ten (10) calendar days from the date of receipt of the Goods by the Buyer (Carrier engaged by the Buyer).

Content and justification of the claim shall be supported by appropriate certificate signed by the Buyer (hereinafter referred to as the "Act"). The Act shall contain the following information:

- number, date of the Contract, number of Amendment to the Contract;
- date of receipt of the Goods;
- date of expertise;

- the Goods name;
- quantity of the Goods according to the invoice;
- actual quantity of the Goods;
- technical condition of the Goods.

The procedure of claim consideration and settlement in respect of Quantity of the Goods shall be held in accordance with Sections 2.4 – 2.6 hereof and subject to provisions of Section 3.3. hereof.

#### **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 4.4 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) 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 stand ready for unloading by Buyer's representative or the Carrier; or
- ii. 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 shall provide Seller with full and timely information about the Place of Shipment 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 loading of the relevant Shipment by Seller.

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 Shipment);
  - iii. the identity, location and address of the Place of Shipment with instructions for access to the Place of Shipment; and
  - iv. any other information requested by 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.***

#### 4.61 Delivery Date

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.

#### 4.6.2 Delivery terms

- a. 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.
- b. 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 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 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 licenses, 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 Effective 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.

#### 4.9. CIF

***This Section 4.9 shall be applied to the Contract providing CIF as delivery basis.***

##### 4.9.1. Delivery Date

The Delivery Date shall be the moment when the Goods have been loaded on board of the nominated Vessel by customary means of the loading port at the Place of Shipment which date is set in the Bill of Lading.

##### 4.9.2. Delivery terms

- a) If applicable, the Nomination shall be made in accordance herewith.
- b) Where the Seller expressly or impliedly provides the Buyer with a date or a range of dates within which a nominated Vessel shall arrive at the unloading port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the Goods at the unloading port in the indicated period.
- c) Immediately upon, but not later than one Day from the receipt of the Seller's Nomination, the Buyer shall provide the Seller with the following information:
- full written instructions regarding the particulars for the Bills of Lading (consignee, contact details and address of the authorized person);
  - other information necessary for the delivery and reasonably required by the Seller (number of the copies, addresses, etc.);
  - other information which may be required or at the Place of Shipment, Place of Destination and/or by the Seller.
- d) The Seller shall have the right to issue its own instructions if the Buyer fails to provide such instructions and/or information required by this subsection. Any delays or time lost caused by any failure of the Buyer to comply with this subsection shall count as laytime or time on demurrage.

##### 4.9.3. Charterparty Conditions

The Seller may arrange transportation under the Bill of Lading which incorporates charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include:

- i. the provision that the Goods shall be unloaded from the Vessel at the Buyer's expense unless the Seller informed the Buyer reasonably in advance that the Seller bears the unloading costs; and
- ii. the provision that where, at any time after loading, but before the commencement of unloading:
  - 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
  - the country, state, territory or region at which the Place of Destination becomes an embargoed country, the Goods shall be unloaded at an alternative safe port nominated by the Buyer that is not subject to any such prohibition and that is acceptable to the Seller (which acceptance shall not be unreasonably withheld) and the Buyer shall bear all and any costs (if any) involved in the Vessel's reaching such alternative Place of Destination and/or in the unloading of the Shipment at such place.

#### 4.9.4. Licenses and clearances

Where necessary, the Seller shall provide the Buyer with reasonable support in acquisition of all appropriate licenses and clearances for the unloading of the Goods; provided that the Buyer shall reimburse the Seller's costs and expenses arising out of or in connection with such support.

#### 4.9.5. 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 the Seller.

#### 4.9.6. Taxes after delivery

Unless otherwise expressly agreed by the Parties in the Contract, the 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.

#### 4.10 CFR

***This Section 4.10 shall be applied to the Contract providing CFR as delivery basis.***

##### 4.10.1. Delivery Date

- a) The Delivery Date shall be the moment when the Goods have been loaded on board of the nominated Vessel by customary means of the loading port at the Place of Shipment which date is set in the Bill of Lading.
- b) The unloading of the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.

##### 4.10.2. Delivery terms

- a) The Buyer shall provide the Seller with full and timely information about the unloading port. The Buyer shall provide such information, along with the Buyer's documentary instructions, to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled Shipment Date of the Goods by the Seller.

The information must include:

- i. the name of the unloading port;
- ii. all instructions regarding customary documentation which may be required at the unloading port;
- iii. the identity of the terminal(s) at unloading port with instruction to enable the Vessel to prepare and submit necessary information to the customs or border authorities; and
- iv. any other information requested by the Seller.

Should the Buyer fail to timely submit such information, the Seller shall not be required to initiate the transportation and delivery of the Goods, which will not constitute a waiver of the 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 the Buyer.

- b) Where the Seller expressly or impliedly provides the Buyer with a date or a range of dates within which the respective Shipment shall arrive at the unloading port these shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller shall not assume any responsibility for the delivery of the Goods at the unloading port in indicated period.

##### 4.10.3. Licences and clearances

- a) The Parties shall obtain any licences, permits and documents which are necessary for successful import and export clearance of the Goods.
- b) The Seller shall timely obtain export permits.
- c) The Buyer shall timely obtain import permits.

d) All delays due to absence of custom clearance shall be at the expense of the liable Party.

#### 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 the 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 the Buyer.

## PARAGRAPH V TRANSPORTATION

### 5.1 **General conditions of transportation**

- a) The Transport Document hereunder and the Contract shall be:
- CMR or TIR (or consignment note) – for delivery by Truck(s);
  - Bill of Lading (or “B/L” or “BL” or “BOL”) - for delivery by Vessel and Sea containers.
- 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. **Special Conditions of transportation by Truck(s)**

***This Section 5.2. shall be applied when Contract specifies delivery by road (Truck(s))***

5.2.1 Where Seller expressly or impliedly provides the Buyer with a range of dates of dispatch of the Goods within the Shipment period or arrival of Truck(s) loaded with the Goods, dispatch of the Goods may be performed on any of the dates so provided.

5.2.2. 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.

5.2.3. Seller has the right to substitute any Truck(s) identified under subsection 5.2.2 (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.

5.2.4. 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.

5.2.5. 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.

5.2.6 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.

#### 5.2.7 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 (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.

#### 5.2.8 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.

#### 5.2.9. Defective Truck(s)

If Buyer (or Buyer's authorized representative, or Buyer's Carrier, or any other party on Buyer's side or for whom Buyer bears responsibility) returns any 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 Truck(s).

#### 5.3. **Special conditions of transportation by sea**

***This Section 5.3 shall be applied when Contract specifies delivery by sea (sea Containers)***

- 5.3.1. Where the Seller expressly or impliedly provides the Buyer with a range of dates within an agreed period of arrival of the Vessel at the Place of Destination, the delivery of the Goods may be performed on any of the dates provided.
- 5.3.2 On the next Day after dispatch of the Goods the Seller shall provide the Buyer with all information necessary for unloading of the Goods:
  - a) the Contract reference number.
  - b) the name of arriving Vessel, from which the Goods must be unloaded.
  - c) description of the Goods and their Bill of Lading quantity.
  - d) estimated Time of Arrival and date of Bill of Lading.
  - e) number of copies of Bill of Lading; and
  - f) details of any other cargo on board of the Vessel, if it can have any influence on unloading of the Goods process.

#### 5.3.4 The Buyer warrants that:

- a) the unloading port and unloading terminal, indicated as the Place of Destination, shall comply and shall remain fully compliant with the requirements of the ISPS Code;
- b) the Buyer shall provide a safe port and safe berth for the Vessel and the Vessel shall when fully laden be able to safely reach, lie at, unload the Goods at and depart from the unloading terminal, always safely afloat, free from air draft and other physical restrictions and without causing damage to the unloading terminal, rivers, canals, shores, berths, docks, jetties, surroundings, environment and people.
- 5.3.5 The Buyer shall be liable for and shall indemnify the Seller in respect of any loss or damage, including but not limited to any liability for damage to the Vessel, the berth, terminal, rivers, canals, shores, berths, docks, jetties, surroundings, environment and people, additional freight costs or any deviation costs or any demurrage or detention, or expenses arising out of and in relation to any failure of the Buyer to comply with Section 5.3.4. Any costs or expenses arising out of or related to security regulations or measures required at the Place of Destination by the unloading port or facility or any relevant authority in accordance with the ISPS Code, if applicable, (including but not limited to, security guards, launch services, tug escorts, port security fees or Taxes and inspections;) and any delays caused by any additional or special security measures, inspections or other action required at the Place of Destination by the unloading port or facility or any relevant authority as a result of the nominated Vessel's previous ports of call, shall be borne by the Buyer and such time shall count as laytime or time on demurrage.

#### 5.3.6 Nomination

- a) The Seller shall not later than 5 (five) Days prior to the first Day of the laytime at loading port, nominate for the Buyer's acceptance (and such acceptance not to be unreasonably withheld) the Vessel which is to be loaded with the Goods for each scheduled Shipment (the "Nomination").
- b) The Nomination shall include:
  - (i) the Contract reference number;
  - (ii) the name of the Vessel on which the Goods will be loaded;
  - (iii) a description of the Goods and approximate quantity or the Bill of Lading quantity (if available);
  - (iv) ETA of the Vessel;
  - (v) the Vessel(s) loading laytime;
  - (vi) details of any other cargo on board or to be loaded on board if loading a part of cargo;
  - (vii) details of the last 3 (three) cargoes of the Vessel and such cargoes shall be of a nature, which are unlikely to have an adverse effect on the quality of the Goods; and
  - (viii) details of the agent at the Place of Destination (if available).
- c) The acceptance or reasonable rejection of the Vessel shall be advised by the Buyer as soon as possible, however not later than 12 (twelve) hours upon receipt of such Nomination.
- d) Unless otherwise specified herein, the Seller may substitute any Vessel named in the Nomination not later than 5 (five) Days prior to the first Day of the ETA at the loading port. Where a Vessel is substituted, the Seller shall send to the Buyer a revised Nomination in the form set out above.

#### 5.3.7 NOR

Upon arrival of the Vessel at the Place of Destination (the unloading port or customary anchorage or area or such other place as the Vessel may be ordered to await unload) or other closest possible point to the Place of Destination, the Vessel shall tender its notice of readiness (NOR). The Buyer is obliged to ensure his timely presence at the Place of Destination at the Delivery Date for unloading of the Goods.

The Buyer's (or the Buyer's representative / agent's) absence at the Place of Destination shall not prejudice the fact that the Seller had successfully performed delivery of the Goods for the purpose of the Contract.

#### 5.3.8 The Buyer's Right to Require

Where the Buyer, by written instruction to the Seller, requests that the Vessel:

- a) co-mingles different grades of the Goods belonging to the Buyer; and/or
- b) otherwise breaches the Vessel's natural segregation; and/or
- c) dopes the Goods by introducing additives after loading; and/or
- d) adds dye to the Goods after loading; and/or
- e) performs on board blending of the Goods; and/or
- f) carries additives/dye in drums on deck; and/or
- g) carries out such other cargo operation as the Buyer may reasonably require and always providing that the Vessel is capable of performing such operations and that such operations are within the scope of the charterparty conditions or otherwise agreed by the Vessel's owners;

then the Buyer shall indemnify and hold the Seller harmless against any liability, loss, damage, delay or expense that the Seller may sustain by reason of complying with the Buyer's request. The indemnity given by the Buyer to the Seller shall be no less in scope than the indemnity required by the Vessel's owners to comply with the Buyer's request.

#### 5.3.9 The Seller's Right to Refuse

The Seller reserves the right to refuse at any time:

- a) to direct any Vessel to undertake or to complete the voyage to the Place of Destination if such Vessel is required in the performance of the Contract, in the Seller's opinion, to risk its safety or to risk ice damage, or to transit or to proceed or to remain in waters where there is war (whether declared or not), terrorism, piracy or threat thereof; or
- b) to direct the Vessel to undertake the voyage to the intended Place of Destination if such Vessel is required in the performance of the Contract to transit waters, which in the Seller's reasonable opinion, would involve abnormal delay; or
- c) to undertake any activity in furtherance of the voyage which in the opinion of the Vessel's master could place the Vessel, its cargo or crew at risk.

If the Seller agrees to direct the Vessel to undertake or to complete a voyage as referred to in this Paragraph, the Buyer undertakes to reimburse the Seller, in addition to the Total Goods Value payable under the Contract, for all costs incurred by the Seller in respect of any additional, freight, demurrage, insurance premium and any other sums that the Seller may be required to pay to the Vessel's owner including but not limited to any sums in respect of any amounts deductible under such owners' insurance and any other costs and/or expenses incurred by the Seller.

#### 5.3.10 Ice clause

- a) In case of ice at the Place of Destination or on the voyage to the Place of Destination which directly prevents or hinders safe navigation, the Vessel may only follow a path cut by ice breakers, provided that the master considers such navigation safe. Under no circumstances will the Vessel be obliged to force a path through the ice. If required, the Buyer shall, at its own expense, place icebreakers at the Vessel's disposal.
- b) The Buyer shall reimburse the Seller for:
  - i. any additional insurance premium incurred;
  - ii. the cost of any ice damage incurred less any sum which is recovered under the applicable insurance policy or policies; and
  - iii. any charter hire paid by the Seller for the period of repair necessitated by ice damage, including hire paid by the Seller for the Vessel's deviation to the repair yard.
- c) In the event that the Place of Destination is inaccessible due to ice, or in the event that the master deems the Vessel to be at risk of being unable to leave the Place of Destination due to ice, the Vessel will proceed to the nearest ice-free position and request revised orders. Immediately upon receipt of such request, the Buyer shall nominate an alternative ice-free and accessible port or facilities for receiving the Goods, provided that if the Place of Destination is a loading port then such an alternative ice-free and accessible port or facilities shall be agreed with the Seller. Any additional freight, expenses, demurrage and/or dues incurred as a result of such revised orders shall be for the account of the Buyer.

#### 5.3.11 Conditions of use of sea Container(s)

- a) The period of free use and payment for excess use of Container(s) in port of unloading shall be according to the applicable rules of the forwarder's agent/Container owner or customary at the Place of Destination.
- b) In the event a Container is damaged while it is in possession of the Buyer or the Buyer's counterparties, the Buyer shall promptly inform the Seller thereof and within 30 (thirty) days after the Seller's request pay to the Seller the documented repair costs in full, including, without limitation, expenses incurred in transporting the Container to the place of repair and for the surveyor's services. If the owner of the Container (or the forwarder agent, if authorized) decides that the repair of the Container is impossible or not reasonable as a result of the damage incurred, the Container is considered to be lost. In that event the Buyer shall pay the Seller the amount equivalent to the value of a corresponding container of the same size and type of the Container, which shall not be less than the cost of the Container, as set by the owner.
- c) The assessment of damage to the Container during the period of use by the Buyer shall be done by the Seller or an expert engaged by the Seller or by the owner or by the expert engaged by the owner. The expert costs are born by the Seller or the owner. Upon the results of the assessment the expert shall prepare a report based on which the owner of the Container shall resolve on the feasibility of the Container's repair. The expert costs shall be paid in full by the Buyer to the Seller.
- d) The Buyer shall return the Container in accordance with the Seller's written instructions as soon as possible following the completion of the transportation and in any event within the free use period stated in the customary rules at the Place of Destination. The Container is to be freed from all particles of the cargo and material used for the Goods separation.
- e) Should the Buyer fail to return the empty and clean Container to the forwarder (or the forwarding agent) within the free use period, such Container is considered to be lost. In that event the Buyer shall pay the Seller the amount equivalent to the value of a corresponding container of the same size and type of the Container, which shall not be less than the cost of the Container, as set by the owner.
- f) Should the Buyer fail to return the Container within the free use period, the Seller is entitled at its own discretion: (i) to claim the cost of the lost Container; or (ii) extend the return period and charge 35 (thirty five) USD for each Day of use beyond the free use period or such higher rate as may be applicable to the forwarder's agent/Container owner or customary at the Place of Destination. In the event the Container is lost or deemed to be lost (as described in this Paragraph 6.3. hereof), the charge for the use beyond the free use period shall be calculated until the date of payment of the cost of the lost Container.
- g) The Buyer shall provide the Seller with full written instructions regarding the particulars for the Bill of Lading including consignee, contact details and address of the authorized person of the consignee, other information necessary for the delivery

and reasonably required by the Seller, number of the copies, addresses, etc. and such other information which may be required at the Place of Shipment, Place of Destination and/or by the Seller. The Seller shall have the right to issue its own instructions if the Buyer fails to provide the Seller with the instructions and/or information required by this Paragraph.

**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.
- 6.2. 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**

*This Paragraph VII shall be applied when the Contract specifies delivery by road (Truck(s)).  
Not applicable for delivery in sea Containers on CIF, CFR.*

- 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 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

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

*Not applicable for delivery in sea Containers on CIF, CFR.*

- 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 road (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 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.
- 8.5 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 one hundred per cent (100 %) 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 Conditions***

**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 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***

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 Section 10.2.1 above.

**Section 10.3. Letter of Credit**

***This Section 10.3 applies to Contracts specifying Letter of Credit***

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 Longstop 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. CAD ("Cash against documents")***

***The terms and conditions of this Section 10.4 shall be applied to the Contract if the Contract specifies CAD as the payment terms, unless otherwise specified therein***

10.4.1. These payment terms are governed in accordance with the ICC Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (URR 525).

Buyer shall pay the Goods via Cash against documents at sight (hereinafter referred to as "CAD at sight") in accordance with the conditions specified below.

10.4.2. Pursuant to payment terms via CAD at sight Buyer shall pay for the Goods in advance in the amount specified in the Contract.

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

Within ten (10) Business days after the date when the documents stating the right of disposal of the Goods were issued Seller shall

- (i) transfer the originals of such documents to Seller's Bank and (ii) send the copy of such documents to Buyer.

10.4.4. The Parties expressly have acknowledged and agreed that the following documents are considered as the documents stating the right of disposal of the Goods:

- i. Commercial invoice;
- ii. Railway bill – for delivery by railroad, or  
CMR or TIR (as the case may be) – for delivery by road;
- iii. Packing list issued by Seller.

The Parties may mutually agree in writing in the Contract other documents stating the right of disposal of the Goods depends on the reasonable requirement of the respective authority.

10.4.5. Upon receipt of the documents stating the right of disposal of the Goods Seller's Bank shall transfer the originals of such documents to Buyer's Bank; provided that such Buyer's Bank was expressly preliminary approved by the Seller in writing.

10.4.6. Buyer shall pay five-fifteen per cent (5-15%) (as it is stipulated in the Contract) of the amount specified in the Seller's commercial invoice in advance within five (5) Business Days after the date of Seller's commercial invoice.

10.4.7. Buyer shall confirm Buyer's Bank his Consent for payment for the original documents stating the right of disposal of the Goods and shall pay the remaining amount specified in Seller's commercial invoice at the rate of eighty five – ninety five per cent (85-95%)(depending on the amount of advance payment) within fourteen (14) Days from the moment of arrival of the Goods to the Place of Destination.

10.4.8. Without prejudice to other provisions hereof the advance payment for the Goods paid by Buyer in accordance with this Section is considered as Seller's compensation for storage of the Goods before its actual transfer to Buyer. In case Buyer doesn't pay the remaining amount for the Goods within fourteen (14) Days from the moment of arrival of the Goods to the Place of Destination, Seller shall be entitled to retain the advance payment for the Goods paid by Buyer in accordance with this Section for compensation of the Seller's expenses for storage of the Goods.

10.4.9. Buyer shall (i) effect the payments specified in subsections 10.4.6 and 10.4.7 of this Section and (ii) ensure the availability of the total amount to be paid pursuant to subsection 10.4.7 of this Section on the date of confirmation to Buyer's Bank of his Consent for payment for the documents and effect this payment in accordance with the Contract by telegraphic transfer and without deduction

into Seller's bank account and Buyer shall indicate the number and the date of the Contract/Amendment and commercial invoice number in the payment reference (the purpose of payments).

10.4.10. From the date of receipt of Buyer's Consent for payment for the documents stating the right of disposal of the Goods Buyer's Bank shall transfer the originals of such documents to Buyer.

10.4.11. The Parties expressly have acknowledged and agreed that in case of payment for the Goods via CAD at sight the risk and title to the Goods shall transfer from Seller to Buyer at the date of receipt by Buyer of the originals of the documents stating the right of disposal of the Goods.

### **Section 10.5. Security of the Buyer's Payment Obligations**

*This Section 10.5 applies to Contracts specifying the Security of the Buyer's payment obligations*

#### **10.5.1 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 Longstop 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.

#### **10.5.2 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 Conditions) 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.

#### **10.5.3 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 10.2. 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.

#### 10.5.4 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 10.5.2. 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 10.5.2. hereof, and/or for any other reason, not related to the Seller, prior to the term herein stipulated, the Buyer shall procure the reissuance of such Guarantee in compliance herewith, promptly but not later than ten (10) Days from the occurrence of any event indicated in this Section. Where Buyer fails to procure reinstatement of any Guarantee within the specified term, Seller is entitled upon written notice to Buyer to suspend performance of all and any obligations hereunder until the new Guarantee is provided, and/or cancel and/or resell or otherwise dispose of the Goods to any Third party. Seller shall be not liable for such suspension of the obligation's(s') performance, and/or cancellation, and/or resale and any other disposal of the Goods. Buyer may not make any claims in connection with such acts of the Seller notwithstanding anything to the contrary herein and in the applicable Law.

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

## PARAGRAPH XI RESPONSIBILITIES OF THE PARTIES

### 11.1. Delivery liquidated damages

a. For each full Week of delay in Seller's delivery of the Goods commencing thirty (30) Days after the latest date within the Shipment period as specified in the Contract, the Buyer shall be entitled to demand liquidated damages from the Seller for such delivery delay in the amount equal to 0.1% (one tenth of one per cent) of the Price for the late delivered Goods per Day, up to a maximum of 10% (ten per cent) of the Price for the late delivered Goods.

b. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery and the Buyer shall not be entitled to liquidated damages until the Seller is at least more than 30 (thirty) Days late under the terms and conditions specified in the Contract. The Seller shall not be liable to the Buyer in liquidated damages for delay caused by a Force Majeure Event, failure or default on the part of the Buyer, or where the Seller is entitled to delay delivery pursuant to the terms of the Contract.

c. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery or non-delivery of the Goods and the Buyer shall not be entitled to claim any losses, or liquidated damages, or any other claims in case of the planned Manufacture production capacity repair; provided that the Seller shall notify the Buyer of such repair not later than one week prior to the month when the repair is planned. The Parties acknowledge and agree that Seller's notification of the repair is enough and sufficient evidence and confirmation of the planned repair.

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

**11.2. Interest for late payment**

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

**11.3. Suspension**

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

**11.4. Late acceptance**

In the event that the Buyer fails or refuses to accept delivery of the Goods or any part thereof 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 Effective 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]**

**Document Date [insert document date]:**

**Place: [insert the place]**

<p>This Contract shall become effective from [Insert date when this Contract should take effect from] (the "Effective Date"), provided always that no part of this agreement shall come into existence unless the Seller receives a copy of the counterpart of this Contract executed by the Buyer within [insert] Business Days after the Document Date specified hereinabove (the "Longstop Date").</p>						
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	XIII. COUNTERPARTS

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