

**SIBUR INTERNATIONAL GMBH**

**BUSINESS TERMS**

**OF SALES OF PLASTIC AND ORGANIC SYNTHESIS**

**FOR DELIVERIES BY VESSEL AND SEA CONTAINER(S)**

**CIF, FOB, CFR**

**(BT\_BU 50\_V&C)**

**June 01, 2015**

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## INTRODUCTORY PROVISIONS

- A.** These Business Terms ("Business Terms") shall apply to all agreements for sale of goods ("Contract") executed by and between SIBUR International GmbH ("Sibur") and Buyer that incorporate these Business Terms by reference. The version of these Business Terms published by Sibur (whether delivered by Sibur to Buyer before or upon the entry into the Contract or, if not so delivered, then as published on the website <http://www.sibur-int.com>) as of the date when the Contract takes effect shall apply to the relevant Contract. The Business Terms may be amended, revised, restated or supplemented by Sibur from time to time.
- B.** These Business Terms are accompanied and supplemented by the General 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. The quality of the Goods shall be confirmed by a Certificate of Quality issued by the Seller or by the Manufacturer of the Goods, and/or the Inspector's Report (as the case may be).
- 2.2. The Buyer, upon the Seller's prior written request, shall send to the Seller the samples of the Goods for testing. The Seller may at its own discretion perform such testing based on the TU and/or GOST methods or initiate an inspection in accordance with the Section 2.3. hereof. In the event either Party does not agree with the results of the test(s) made by the Seller in accordance with this Section 2.2., the quality inspection shall be determined by an independent Inspector in accordance with Section 2.3. hereof.
- 2.3. Unless otherwise agreed by the Parties in the Contract, quality inspection shall be performed at the Place of Shipment by an Inspector of an internationally recognised inspection company mutually agreed between the Parties and in accordance with the standard practice (i) at the place of the inspection or (ii) of the Inspector if there is no standard practice at the place of inspection.
- 2.4. The inspection results shall be documented in the Inspector's Report and shall be conclusive and binding on the Parties for invoicing purposes and, for quality purposes and shall be final and binding for both Parties, except in case of fraud or manifest error.
- 2.5. In the event that the quality of the Goods does not conform with the contractual Specification, the Parties shall discuss the Buyer's remedies for such non-conforming the Goods. The remedies may include, for example, a price adjustment for the Goods. The outcome of the Parties' discussion shall be documented in a written Amendment to the Contract.
- 2.6. The costs of the inspection (under Section 2.3. hereof) shall be equally shared between the Seller and the Buyer. Any other inspections and related services, if required by the Buyer, shall be performed at the Buyer's sole expense.
- 2.7. The Party initiating the inspection shall ensure that the Inspector issues Inspector's Report to the Seller and the Buyer as soon as practicable and retains samples taken for at least 90 (ninety) Days from the date of inspection.
- 2.8. **Claims**  
Unless otherwise specified in the Contract claims if any on quality of the Goods to be provided by the Buyer to the Seller according to Part II of the General Conditions.

**PARAGRAPH III**  
**QUANTITY**

- 3.1. The quantity of the Goods shall be specified in the Transport Document. If either Party does not agree with the quantity indicated in the Transport Document, the quantity of the Goods delivered by the Seller to the Buyer shall be determined through inspection.
- 3.2. Unless the Contract provides otherwise, inspection (if any) shall be determined at the Place of Shipment by an Inspector of an internationally recognized inspection company mutually agreed by the Parties and in accordance with the standard practice (i) at the place of the inspection or (ii) of the Inspector if there is no standard practice at the place of inspection, unless the Contract provides otherwise.
- 3.3. If the Inspector determines that the quantity of the Goods does not conform with the quantity stated in the Transport Document for more than 0.5 % (zero point five) (the "Permitted Deviation") the Goods shall be accepted by the value defined by the Inspection with issuance of the respective off-loading acts signed by such Inspector. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach of its obligations in respect of the delivery of the Goods concerning any quantity deviation below the Permitted Deviation and the Buyer shall not be entitled to claim any losses, or liquidated damages, or any other claims resulting from such deviation. All claims concerning quantity deviation in excess of 0.5 % (zero point five) shall be submitted by the Buyer according to Section 3.10 hereof.
- 3.4. Unless the Contract provides otherwise, the Planned Contract Quantity and/or the Planned Monthly Quantity specified (as the case may be), shall be subject to a tolerance of +/- 10 % (plus/minus ten) to be determined in the Seller's sole discretion.
- 3.5. The Actual Contract Quantity and/or Actual Monthly Quantity delivered under the Contract shall be equal to the quantity specified in the Transport Document.
- 3.6. The Actual Contract Quantity shall be the basis for determining the Total Goods Value.
- 3.7. The Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) may deviate by not more than 10 % (ten) of the Planned Contract Quantity or the Planned Monthly Quantity respectively. The Buyer may back any surplus quantities to the Planned Contract Quantity or the Planned Monthly Quantity specified in the Contract as the case may be.
- 3.8. In the event that the Seller is not able to deliver the Planned Monthly Quantity or the Planned Contract Quantity of the Goods within specified period because of the reduction of the Manufacture production capacity, provided that the Seller informed the Buyer of this reasonably in advance, the Parties shall mutually agree delivery terms for the outstanding quantity of the Goods. The Seller's suggestions shall be taken into account and the Parties agree that the Seller will not be obliged to deliver in excess of the production capacity of the Manufacture. The Parties acknowledge that the remedy provided in this Paragraph will be the sole remedy that the Buyer will have in the event the Seller is not able to deliver the Planned Monthly Quantity or the Planned Contract Quantity of Goods during the relevant period.
- 3.9. In the event that the Buyer orders less Goods than the Planned Monthly Quantity or the Planned Contract Quantity for a relevant period, the 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 the Seller, taking into account the Buyer's suggestions); or (ii) request the payment of 10% (ten) of the Price of the outstanding quantity of the Goods as liquidated damages (the Parties agree that the above amount is a genuine pre-estimate of loss the Seller will suffer if the Seller delivers a quantity of Goods less than the Planned Monthly Quantity or the Planned Contract Quantity. Without prejudice to the above, if the amount of actual damages exceeds the stated liquidated damages, the Seller may claim the actual amount of damages without limitation). The Seller shall notify the Buyer the option it chooses to proceed in writing. However, failure to notify will not waive the Seller's rights.
- 3.10. **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 100% (one hundred) but less than or equal to 110% (one hundred and ten) of the Planned Contract Quantity or the Planned Monthly Quantity respectively the Buyer shall pay the outstanding balance within 5 (five) Days of receipt of an appropriate invoice from the Seller.
  - b) In case the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 100% (one hundred) but in excess of or equal to 90% (ninety) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, the

- Seller at may, in its own discretion, either: (i) meet the Planned Contract Quantity or the Planned Monthly Quantity (as the case may be) in further Shipments, or (ii) repay to the Buyer the Prepayment paid by the Buyer for the Goods not delivered within 3 (three) 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 the Buyer for the Goods not delivered to the further Shipments (if applicable). The Buyer's rights set forth in this Section shall be the Buyer's sole and exclusive remedy for such Shipment, howsoever caused, always excepting fraud, and the Seller shall have no other liability to the 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 110% (one hundred and ten) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, the Buyer may, in its own discretion: (i) return any quantity in excess of 110% (one hundred and ten) of the Planned Contract Quantity or the Planned Monthly Quantity respectively to the Seller at the Seller's expense, or (ii) to retain any Goods quantity in excess of 110% (one hundred and ten) 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 5 (five) Days of the date of the Seller's invoice.
- d) In the event that the Actual Contract Quantity or the Actual Monthly Quantity (as the case may be) is less than 90% (ninety) of the Planned Contract Quantity or the Planned Monthly Quantity respectively, the Buyer may require the Seller to pay to the Buyer direct losses incurred by the Buyer, provided that such direct losses are evidenced by sufficient documentation. Such payment shall be made within 7 (seven) Days after the execution of the respective Verification Act by the Parties. The Parties agree that in any case, the maximum amount of direct losses may not exceed 10% (ten) of the Price of the Goods which were not delivered. The Buyer's rights set forth in this Paragraph shall be the Buyer's sole and exclusive remedy for such short delivery, howsoever caused, always excepting fraud, and the Seller shall have no other liability to the 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 110% (one hundred and ten) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and the Buyer fails to state its intention to return excess the Goods within the period specified above, the Buyer will be deemed irrevocably to have retained the excess the Goods and will accordingly pay for the excess the Goods retained within 5 (five) Days of the date of the 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 90% (ninety) of the Planned Contract Quantity or the Planned Monthly Quantity respectively and the Buyer fails to state request to compensate within 10 (ten) Days after the Delivery Date, the Buyer will be deemed irrevocably agreed with the Seller's obligation to meet the Planned Contract Quantity or the Planned Monthly Quantity respectively (as the case may be) in further deliveries.

### 3.10. Claims

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

## PARAGRAPH IV DELIVERY BASIS

### 4.1. General Delivery Terms

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

### 4.2. Transfer of risk and title

4.2.1. The risk and title to the Goods shall transfer from the Seller to the Buyer at the Delivery Date, unless otherwise provided herein and/or 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. The Seller's right to refuse

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

- a) the delivery under an intended or customary route to the Place of Destination becomes impracticable for any reason whatsoever beyond the Seller's control;
- b) the cost of the delivery to the Place of Destination (including Taxes) and/or insurance, if applicable, has been significantly increased (more than by 20 (twenty)% within 1 (one) month, which at the time of entry into the Contract could not be expected by the 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 a country affected by the Sanctions.
- e) Should the Seller agree to undertake or complete the delivery under an alternative route or at an alternative Place of Destination nominated by the Buyer, and accepted by the Seller (which acceptance shall not be unreasonably withheld), or under changed circumstances as the case may be, the Buyer shall reimburse the Seller for any additional costs and/or expenses incurred by the Seller.

#### 4.4. CIF

***This Section 4.4 shall be applied to the Contract providing CIF as delivery basis.***

##### 4.4.1. **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) For the liquid Goods the Delivery Date shall mean the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Place of Shipment.

##### 4.4.2. **Delivery terms**

- a) Indicative dates of arrival. 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 Place of Destination. These shall be indicative only, made by the Seller as an honest assessment without guarantee. The Seller

shall not assume any responsibility for the arrival of the Goods at the Place of Destination.

- b) If applicable, the Nomination shall be made in accordance herewith.
- c) 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.
- d) 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.
- e) 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 Paragraph. Any delays or time lost caused by any failure of the Buyer to comply with this Paragraph shall count as laytime or time on demurrage.

##### 4.4.3. **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.

#### 4.4.4. 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.

#### 4.4.5. 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.

#### 4.4.6. 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.

### 4.5. FOB

***This Section 4.5 shall be applied to the Contract providing FOB as delivery basis.***

#### 4.5.1. Delivery Date

- a) The Delivery Date shall mean 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) For the liquid Goods the Delivery Date shall mean the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Place of Shipment.

#### 4.5.2. Delivery terms

- a) The unloading of the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.
- b) The time required by the Vessel to clean the tanks or otherwise prepare the Vessel for the loading of the Goods or start the transportation shall not be included in the laytime.
- c) The Buyer provides the Seller with full and timely information about the Vessel and the Place of Destination, including but not limited to the required documents, the mode of operation. The named information is to be provided to the Seller via facsimile or by other means agreed upon by the Parties, at least 5 (five) Business Days prior to each scheduled Date of shipment of the Goods by the Seller.

The information must include:

- i. the name of the Place of Destination (loading port).
  - ii. the identity of the expected arrival terminal(s) at loading port.
  - iii. the name of the Vessel and Vessel's Master contact information.
  - iv. any other information requested by the Seller.
- d) Should the Buyer fail to timely submit the named information, the Seller is not required to initiate the transportation and delivery of the Goods, which will not constitute a waiver of the Buyer's breach of Contract. Any delays in delivery of the Goods which result from inaccuracies of provided information will be on the account of the Buyer and shall not be viewed as breach of the Contract by the Seller.
  - e) The Nomination, if applicable, shall be made in accordance herewith.

The information on the Vessel to be submitted by the Buyer shall include:

- i. name of the Vessel, date built, flag;
- ii. position at 10:00 gmt on the date of Nomination and ETA loadport;
- iii. deadweight;
- iv. draft;
- v. length and width;
- vi. ballast type;
- vii. type of hull;
- viii. cp speed;
- ix. three previous cargoes;
- x. demurrage rate;
- xi. Vessel's approvals;
- xii. ship's agents loadport; and

xiii. details of any other cargo on board and conditions of segregation

The substitution of the nominated Vessel shall be subject to acceptance by the Seller and loading terminal.

#### 4.5.3. **Notice of Readiness (NOR)**

- a) The Buyer shall arrange for the Master of the Vessel loaded under the Contract to advise telegraphically to Seller's local representative about the following notices within the limits specified:
  - i. At least 72 (seventy-two) hours before arrival to advise ETA.
  - ii. At least 48 (forty-eight) hours before arrival to confirm or amend ETA.
  - iii. At least 24 (twenty-four) hours before arrival to confirm or amend ETA.
  - iv. On arrival to advise the exact time of arrival.
- b) Upon arrival of the Vessel at the customary anchorage of the Place of Destination, the Master of the Vessel or his local representative shall give Seller's local representative a written NOR evidencing the Vessel's readiness to load the Goods. Such NOR shall not be given until the Vessel has clean tanks ready for loading and has received all clearances required by Customs and/or other local government authorities.
- c) The Buyer shall ensure that the Vessel and its Master shall comply with the rules and regulations at Place of Destination. All damage which may occur to the Vessel, port infrastructure, surroundings and people for the reason of such non-compliance shall be on account of the Buyer alone.
- d) If the Vessel tenders NOR at the Place of Destination before the first Day of the loading date-range allocated to that Vessel, it can be given a loading berth as soon as possible but without commitment or obligation by the Seller to load immediately and laytime shall begin on commencement of loading or at 06:00 hours a.m. local time on the first Day of the loading date-range, whichever occurs first.
- e) If the Vessel tenders NOR after the loading date-range as well as if the Vessel is not ready (not suitable) for loading of the Goods, the Seller shall not be obligated to load the Goods which should have been loaded on such Vessel unless the Seller specifically agrees to do so, in which case laytime shall begin when Vessel is all fast at berth.
- f) In case the Vessel has not arrived at the port within the agreed delivery range, as well as if the Vessel is not ready (not suitable) for loading of the Goods but the

Seller agrees to deliver the Goods, laytime shall commence when Vessel is all fast at berth.

- g) If the Buyer fails to submit notifications and NOR when due, the Seller shall not be responsible for any eventual demurrage at loading port.
- h) The Parties shall obtain any licenses, permits and documents which are necessary for successful import and export clearance of the Goods.
  - i) Export permits shall be timely obtained by the Seller.
  - j) Import permits shall be timely obtained by the Buyer.
- k) All delays for the reason of absence of custom clearance shall be at the expense of the liable Party.

#### 4.5.4. **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.

#### 4.5.5. **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.

#### 4.5.6. **Deadfreight**

Only deadfreight through the Seller's fault will be compensated by the Seller. If the Buyer requires the Seller to compensate for the deadfreight it shall provide the Seller with a relevant claim accompanied by all documents substantiating the Buyer's costs and expenses. Only reasonable deadfreight will be compensated.

#### 4.6. **CFR**

***This Section 4.6 shall be applied to the Contract providing CFR as delivery basis.***

##### 4.6.1. **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) For the liquid Goods the Delivery Date shall mean the moment when the Goods passes the flange connection between the delivery hose and the permanent hose connection of the Vessel at the Place of Shipment.
- c) The unloading of the Goods is the Buyer's sole responsibility and shall not prejudice completed delivery of the Goods by the Seller.



#### 4.6.2. 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.

#### 4.6.3. 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) Transport Document hereunder and the Contract shall be the Bill of Lading (or "B/L" or "BL" or "BOL").
- b) Delivery of the Goods shall be immediately followed and witnessed by presentation by the Seller to the Buyer or Carrier, or the Buyer's representative of a valid Transport Document. Such document shall be signed and marked by the Seller and Carrier at the place of loading and shall be deemed conclusive proof of delivery by the Seller.
- c) The 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

5.2.1. 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.

5.2.2 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.

5.2.3 Where the Buyer charters the Vessel, the Buyer shall ensure the Vessel's fitness and cleanliness is satisfactory for delivery of the Goods in time and without affecting their quality. The cleanliness shall be evidenced by an appropriate certificate issued by Saybolt, SGS or other reliable body. However, it does not preclude the Seller to conduct an inspection of the Vessel and suspend the Goods' loading if there are reasonable doubts in the Vessel's condition. In this case the Parties shall promptly initiate an independent inspection, splitting relevant costs evenly. If the Vessel is found unsatisfactory, the

Buyer may either: (i) clean the Vessel or (ii) substitute the Vessel with a satisfactory one or (iii) request to proceed with loading taking all risks related to adverse effect on the Goods. Option (iii) is allowed only upon the Seller's consent. Any related costs and expenses shall be borne by the Buyer or compensated in full by the Buyer to the Seller, including, without limitations, the Seller's costs and expenses related to delay in the delivery of the Goods.

#### 5.2.4 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.

5.2.5 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 5.2.4. 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.

#### 5.2.6 Nomination

- a) The Party chartering the Vessel shall not later than 5 (five) Days prior to the first Day of the laytime at loading port, nominate for the other Party'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 consenting Party as soon as possible, however not later than 12 (twelve) hours upon receipt of such Nomination.
- d) Unless otherwise specified herein, the nominating Party 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. Such substitution shall always be subject to the requirements that a Vessel of a similar size be provided and that the quantity to be loaded shall not, without prior written consent of the other Party, differ by more than the Permitted deviation from the quantity of the Goods as provided in the Paragraph 3.3. hereof from the quantity specified in the Nomination. Where a Vessel is substituted, the nominating Party shall send to other Party a revised Nomination in the form set out above.

#### 5.2.7 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.

#### 5.2.8 Charterparty Conditions

The Seller may arrange transportation under Bills of Lading which incorporate charterparty conditions normally in use for Vessels. Without prejudice to the generality of the foregoing, such conditions shall be deemed to include the provision that where, at any time after loading but before the commencement of the unloading:

- a) importation of the Goods at the unloading port 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 becomes a country affected by the Sanctions,

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). In any case such alternative port of unloading shall be deemed to be the Place of Destination and all and any costs (if any) involved in the Vessel's reaching such alternative Place of Destination shall be for the Buyer's account.

#### 5.2.9 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.

#### 5.2.10 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.

#### 5.2.11 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 Special conditions of transportation in sea Container(s)

*This Section 5.3. shall be applied when the Contract specifies delivery in 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) within 10 (ten) days prior to the last Day of such month the dates of dispatch are not agreed by the Parties,

the 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 the Buyer for such non-delivery or for any losses and expenses incurred by the Buyer. If the Seller decides to sell the respective Shipment to any third party the Buyer shall reimburse to the Seller all expenses arising out and/or in connection with such sales.

**6.3. Transportation information**

a) If the Goods' transportation is arranged by the Seller, the Buyer shall submit to the 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 5 (five) 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 the Seller.

c) Should the Buyer fail to timely submit the Transportation information, the 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) The Seller shall send to the Buyer the details of the dispatched Shipment via facsimile or by other means agreed upon by the Parties within 5 (five) Business Days after dispatch of the Goods. The details of the dispatched Shipment shall include: Vessel name, the Goods quantity and ETA at the Place of Shipment or the Place of Destination (whichever is applicable).

e) Any delays in loading the Goods at the Place of Shipment (including where the Seller is entitled to delay delivery of the Goods) or in unloading the Goods at the Place of Destination caused by the 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. The Buyer shall indemnify the Seller for all costs, losses and damages, including, but not limited to, demurrage and/or detention incurred by the Seller as a result thereof.

**PARAGRAPH VII**  
**LAYTIME**

7.1. The time allowed to the Buyer for the loading or unloading of the Goods deliverable under the Contract shall be as set out in the Contract.

7.2. If the amount of laytime permitted is not set out in the Contract, laytime shall be 24 (twenty four) hours or such a lesser period as may be specified in the relevant charterparty and/or the agreement with the Carrier, unless otherwise expressly mutually agreed by the Parties in writing. 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. Laytime shall commence: 6 (six) hours after NOR has been tendered (berth or no berth); or when the Vessel is all fast at the berth; whichever is the earlier.

7.3. The Buyer may not refuse to certify receipt of the notice and if it does so, the time of arrival shall be determined according to the Carrier's records. The Buyer shall pay in full any expenses and costs of the Carrier and/or the Seller related to the Buyer's refusal to certify any such notice.

7.4. For the purpose of calculating laytime, loading and unloading of the Goods shall be deemed to have been completed upon disconnection of the discharging hoses or the loading/unloading of the last portion of the Goods.

**PARAGRAPH VIII**  
**DEMURRAGE**

8.1. If the Goods are not loaded or unloaded (whichever is applicable) by the Party required to load or unload the Goods (whichever is applicable) within the time allowed in accordance with the laytime provisions of 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. Unless the Contract provides otherwise, no Force Majeure Event shall affect the running of the laytime or vary or excuse the obligation to pay demurrage. The Party required to load or unload 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.

- 8.2. Where no demurrage rate has been provided in the Contract, the demurrage rate shall be as set out in the relevant agreement with the Carrier and/or the terms and conditions of the charter party (as the case may be), if neither the agreement nor the terms and conditions of the charter party specifies a demurrage rate, the rate shall be 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.
- 8.3. Unless the Contract provides otherwise, demurrage claims must be addressed to the other Party with complete supporting documentation within 9 (nine) months after the Delivery Date; however, it shall not be considered as time-barred by this Paragraph. The Parties consider this period reasonable as they agree that customarily carriers make demurrage claims within approximately 6 (six) months after the Delivery Date.
- 8.4. Demurrage claims shall be considered within 30 (thirty) Days after their receipt by the relevant Party and shall be paid by the relevant Party not later than 14 (fourteen) Days after the invoice receipt from the other Party. If no substantiated comments have been given within the specified 30 (thirty) Days period, the claim shall be deemed accepted.
- 8.5. If the Party required to load or unload the Goods (whichever is applicable) does not load or unload the Goods within the time allowed in accordance with the laytime provisions of the Contract, such Party shall be liable for demurrage even if such delay was caused by the fault or the failure of the Vessel or its master or crew, or if loading or unloading is suspended for the Vessel's own purposes. In such cases the Party in Default shall pay to the other Party all costs and expenses incurred by such other Party as a result thereof.
- 8.6. The demurrage caused by events such as accidents occurring to equipment that affects the loading or unloading of the Goods or fire in or near the loading facilities shall be determined in the appropriate charter party.
- 8.7. Notwithstanding clause 7.2. of PART VII of the General Conditions (ARBITRATION AND LAW), any dispute, controversy, claim or difference relating to or arising out of demurrage in delivery by sea due or alleged to be due under the Contract shall be referred to arbitration in London in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.
- 8.7.1. The referral shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 (fourteen) days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 (fourteen) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within 14 (fourteen) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.
- 8.7.2. Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- 8.7.3. In cases where neither the demurrage claim nor any counterclaim exceeds the sum of USD 10,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure as applicable at the time when the arbitration proceedings are commenced.

## PARAGRAPH IX PRICE

- 9.1. The Price for the Goods shall be determined in the Contract.
- 9.2. Should the final price for the Goods not be known at the time of invoicing, the Seller shall prepare a provisional invoice based upon the pricing information available at the time and the Buyer shall make payment against the provisional invoice. The provisional invoice shall, unless otherwise agreed between the Parties in the Contract, be based upon 100 % (one hundred) of the quantity specified in the bill(s) of lading and the preliminary price calculated based on the formula specified in the Contract.
- 9.2.1. If the amount paid by the Buyer against the 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 pay such outstanding balance within 3 (three) Business days of 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 the 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 the Buyer shall select either (i) that such difference between the amounts will be applied to the further deliveries if applicable or (ii) that 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 such 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:

- a) 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. Bill of Lading
- 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 suspense of the obligation's(s') performance, and/or cancellation, and/or resale and any other disposal of the Goods. Buyer may not make any claims in connection with such acts of the Seller notwithstanding anything to the contrary herein and in the applicable Law.

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

### PARAGRAPH XI RESPONSIBILITIES OF THE PARTIES

#### 11.1. Delivery liquidated damages

- a. For each full Week of delay in Seller's delivery of the Goods commencing thirty (30) Days after the latest date within the Shipment period as specified in the Contract, the Buyer shall be entitled to demand liquidated damages from the Seller for such delivery delay in the amount equal to 0.1% (one tenth of one per cent) of the Price for the late delivered Goods per Day, up to a maximum of 10% (ten per cent) of the Price for the late delivered Goods.
- b. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery and the Buyer shall not be entitled to liquidated damages until the Seller is at least more than 30 (thirty) Days late under the terms and conditions specified in the Contract. The Seller shall not be liable to the Buyer in liquidated damages for delay caused by a Force Majeure Event, failure or default on the part of the Buyer, or where the Seller is entitled to delay delivery pursuant to the terms of the Contract.
- c. The Parties acknowledge and agree that in no event shall the Seller be considered to be in breach under the Contract due to any late delivery or non-delivery of the Goods and the Buyer shall not be entitled to claim any losses, or liquidated damages, or any other claims in case of the planned Manufacture production capacity repair; provided that the Seller shall notify the Buyer of such repair not later than one week prior to the month when the repair is planned. The Parties acknowledge and agree that Seller's notification of the repair is enough and sufficient evidence and confirmation of the planned repair.
- d. THE LIQUIDATED DAMAGES SET FORTH HEREUNDER TOGETHER WITH THE RIGHT OF TERMINATION SET OUT IN SECTION 12.3. HEREOF SHALL BE THE BUYER'S SOLE AND EXCLUSIVE

REMEDIES FOR ANY LATE DELIVERY OF ANY GOODS OR PART THEREOF AND THE SELLER SHALL HAVE NO FURTHER LIABILITY WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY).

#### 11.2. Interest for late payment

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

#### 11.3. Suspension

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

#### 11.4. Late acceptance

In the event that the Buyer fails or refuses to accept delivery of the Goods or any part thereof pending laytime (i.e. have not commenced the accepting and unloading/loading of the Goods as the case may be; or furnished the Seller with explanation of delay and further instructions as regards the Goods satisfactory for the Seller); provided that such Goods have been delivered in accordance with the terms of the Contract, without prejudice to the Seller's other rights under the Contract or the applicable Law, the Seller is entitled to pass the Goods to a proximate logistic company or keeper at the Buyer's risk and expense of which the Buyer shall be notified within reasonable time. The Seller is entitled to exercise its right hereunder irrespective of whether the title to the Goods has passed to the Buyer under the Contract or not. The quantities of the Goods passed confirmed by such a logistic company or keeper shall be deemed as due confirmation of the quantities of the Goods delivered by the Seller; the term for quality claims for the Goods specified in Section 2.8. hereof shall commence as of the expiration of the laytime. The Seller shall be entitled to claim without limitation all and any transport and/or insurance cancellation costs, storage costs, additional transport costs, customs duties, demurrage and other similar or related costs and all expenses arising out of or in connection with such late acceptance from the Buyer till the moment when the Goods are taken by the Buyer.

#### 11.5. The Seller's disposal rights.

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

**CONTRACT (TEMPLATE)**

The Buyer	The Seller
<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>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>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>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>If there is any conflict, ambiguity or inconsistency between the terms and conditions of this Contract and the terms and conditions of the Business Terms, the terms and conditions of this Contract shall prevail.</li> </ol>	<p>The Buyer:</p>	<p>The Seller:</p>
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## 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

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[ ]

on behalf of [ ]  
appropriate for Guarantor

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