

CONDITIONS OF SALE OF BWA WATER ADDITIVES UK LIMITED

1. Definitions and Interpretation

- 1.1 In these Conditions of Sale (unless the context otherwise requires) the following expressions have the following meanings:

Buyer means the person, firm or company placing an order for the Goods

Conditions of Sale means these terms and conditions of sale as amended from time to time by the Seller

Distribution Agreement means a distribution agreement entered into by the Seller and Buyer whereby the Buyer distributes Goods on behalf of the Seller (if any)

Force Majeure Event means acts of God, war, insurrection, riot, civil commotion, acts or threats of terrorism, lightning, earthquake, fire, flood, storm, or extreme weather condition, theft, malicious damage, strike, lockout or industrial dispute (whether such strike, lockout or industrial dispute affects the workforce of the Seller and/or any other person), breakdown or failure of plant or machinery, difficulties in obtaining essential supplies, raw materials, labour, fuel or machinery, failure of utilities, change in any applicable law or any failure or default of a supplier or sub-contractor of the Seller or any event or circumstance to the extent that it is beyond the reasonable control of the Seller.

Goods means all those goods and materials which are to be supplied to the Buyer by the Seller under a Purchase Contract or otherwise

Insolvent means if the Buyer enters or is placed in bankruptcy, receivership, administration or liquidation, is nationalised, becomes insolvent or otherwise unable to pay its debts as they fall due, or ceases to trade, or proposes or makes an assignment or voluntary arrangement or composition for the benefit of its creditors, or applies to court for protection from its creditors, or proposes or makes a resolution for its winding-up or dissolution or is subject to a court application in reference to the same, or is subject to anything analogous to any of the foregoing in any jurisdiction

Publication means all descriptions, drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods and any sample books issued by the Seller, other than the Specification.

Purchase Contract means a contract between the Buyer and the Seller for the supply of Goods from the Seller to the Buyer formed by the Seller's acceptance of the Buyer's order in accordance with clause 2.3 (such acceptance being at all times deemed to be subject to these Conditions of Sale) or any other contract for the supply of Goods from the Seller to the Buyer. Any reference to a Purchase Contract shall be deemed to include a reference to these Conditions of Sale upon which the Purchase Contract is made.

Seller means BWA Water Additives UK Limited, a company registered in England and Wales (registered number 05657343)

Specification means a technical description of the Goods including an acceptable range in respect of various characteristics of the Goods available from the Seller upon request.

- 1.2 In the event of any conflict, the following order of priority shall take precedence:

1.2.1 The Distribution Agreement (if any) shall take precedence over these Conditions of Sale and the Purchase Contract, unless expressly stated otherwise in respect of any particular matter in the Distribution Agreement;

1.2.2 The Conditions of Sale shall take precedence over the Purchase Contract, unless expressly stated otherwise in respect of any particular matter in these Conditions of Sale.

2. Ordering Process

- 2.1 Subject to any variation under clause 2.2, all Goods sold by the Seller to the Buyer under a Purchase Contract or otherwise are sold subject to these Conditions of Sale and any Distribution Agreement (if applicable). The terms of the Purchase Contract, these Conditions of Sale and any Distribution Agreement (if applicable) shall together form the agreement between the Buyer and Seller ('Agreement') to the exclusion of all other terms and conditions, including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation or other similar document. The Buyer acknowledges that any terms which the Buyer purports to apply shall not be binding on the Seller.

- 2.2 The Seller may vary these Conditions of Sale from time to time on 30 days' notice to the Buyer. No variation, amendment or addition to any of these Conditions of Sale proposed by the Buyer shall be deemed to be effective unless confirmed in writing by the Chief Financial Officer or Vice-President of Operations of the Seller.

- 2.3 Each order or acceptance of a quotation for the Goods will be deemed to be an offer by the Buyer to purchase the Goods upon these Conditions of Sale. A Purchase Contract is formed when the order is accepted by the Seller, by way of an acknowledgement of order issued in writing or by email. Any terms in an order shall not be effective unless repeated and confirmed in the acknowledgement of order and no contract will come into existence unless and until an acknowledgement of order is issued by the Seller. The Seller is not obliged to accept any order from the Buyer.

- 2.4 The quantity, product type and expected date(s) of delivery of the Goods will be as set out in the Seller's acknowledgement of order. If any term in an acknowledgement of order is not accurate, the Buyer must inform the Seller promptly upon receipt of the acknowledgement of order. A failure to inform BWA of any inaccuracy promptly and/or acceptance of delivery of the Goods will be deemed to be conclusive evidence of the Buyer's acceptance of the terms of any acknowledgement and these Conditions of Sale.

- 2.5 Subject to clause 3.4, the Buyer may not cancel any Purchase Contract.

3. Delivery

- 3.1 Unless otherwise agreed in the Purchase Contract, delivery of Goods will be made FCA (Incoterms 2010). All Goods must be inspected by the Buyer within 21 days from delivery.

- 3.2 The quantities of Goods that the Seller may deliver to the Buyer may vary by five percent (5%) more or less than the quantity set out in the Purchase Contract ('Variance') but in such circumstances a pro rata adjustment shall be made to the relevant invoice either at the Seller's instance or on receipt of notice from the Buyer within 21 days of delivery setting out the quantity of Goods delivered and the relevant Variance, supported by relevant evidence.

- 3.3 **The Seller will use reasonable endeavours to make available for collection or deliver (as appropriate) the Goods which are the subject of a Purchase Contract within the time agreed in the Purchase Contract and, if no time is agreed, then within a reasonable time, but the time of delivery will not be of the essence. If, despite those endeavours, the Seller is unable for any reason to fulfill any delivery on the specified date or within the specified time, the Seller will be deemed not to be in breach of the Purchase Contract, nor (for the avoidance of doubt) will the Seller, subject to clause 3.5, have any liability to the Buyer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including but not limited to negligence) by any delay or failure in delivery except as set out in this clause 3.**

- 3.4 **Any delay in delivery will not entitle the Buyer to cancel a Purchase Contract unless and until the Buyer has given 14 days' written notice to the Seller, such notice to be given on or after the due date for delivery, requiring the delivery to be made within a particular period and the Seller has not fulfilled the delivery within that period. If the delay only affects part of a Purchase Contract, the Buyer's right to cancel only applies to that part of the Purchase Contract in respect of which delivery is delayed. If the Buyer cancels a Purchase Contract (or part thereof) in accordance with this clause 3.4 then (i) the Seller will refund the Buyer any sums which the Buyer has paid to the Seller in respect of that Purchase Contract (or part thereof) which has been cancelled, and (ii) the Buyer will be under no liability to make any further payments in respect of that Purchase Contract (or part thereof) which has been cancelled.**

- 3.5 If the Seller fails to deliver the Goods in whole or part (subject to the Variance permitted pursuant to clause 3.2) within 45 days of the delivery due date (or within a reasonable period if no due date has been set), its liability for such non-delivery shall be limited to the reasonable and proper costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods. The Seller shall have no liability for any failure to deliver to the extent that such failure is caused by the Buyer, including any failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 3.6 If the Buyer refuses or fails to take delivery of the Goods when they are ready or tendered for delivery (as appropriate), the Buyer shall be in material breach of this Agreement. In such circumstances, the Goods will be deemed to have been delivered on or by the due date and the Seller will, without prejudice to any other right or remedy available to the Seller, be entitled at its discretion to store the Goods at the risk of the Buyer and the Buyer shall in addition to the payment of the Price to the Seller, indemnify the Seller against all costs and expenses of such storage and any additional costs or damage incurred.

- 3.7 Drums, or any other container or packaging that the Goods are contained within, are non returnable as the Buyer shall be responsible for the safe disposal of such packaging at its own cost.

- 3.8 Where, at the Buyer's request, the Seller undertakes urgent delivery, the Seller reserves the right to make an exceptional charge for such delivery.

- 3.9 The Seller reserves the right to deliver the Goods in instalments at its discretion. Where the Goods are to be supplied by instalments, each such instalment shall be a separate Purchase Contract and no cancellation of any one Purchase Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Purchase Contract or instalment. The Seller shall be entitled to invoice the Price for each instalment separately.

4. Risk

Except as otherwise provided in these Conditions of Sale, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery or deemed delivery of the Goods in accordance with clause 3.

5. Price

- 5.1 The price payable for the Goods shall be as stated in the Purchase Contract, and if no price is set out, the price shall be as set out in the Seller's price list in force on the date on which the relevant Purchase Contract is made ("Price"). The Seller may alter its price lists at its discretion.

- 5.2 The Seller reserves the right to alter the Price on or before delivery to take account of (i) any changes in the Specification for the Goods made at the request of the Buyer and agreed by the Seller (ii) any change in delivery dates or any delay caused by the Buyer which results in an increased cost to the Seller (iii) any extra expense as a result of the Buyer's instructions or lack of instructions or to comply with any applicable safety or other statutory or regulatory requirements, and/or (iv) any Variance in the Goods delivered as determined according to clause 3.2.
- 5.3 The Price is exclusive of insurance, carriage and delivery costs, value added tax (and all other similar or equivalent taxes, duties, fees and levies) and expenses in respect of the Goods all of which shall be added to the Price for the Buyer's account unless otherwise stipulated in writing by the Seller. Unless otherwise stipulated in writing by the Seller, the Price includes packaging.
- 6. Payment**
- 6.1 In accordance with the remainder of this clause 6, the Seller shall be entitled to invoice and the Buyer shall pay (i) the Price for the Goods and (ii) the cost of any packaging, insurance, carriage and delivery costs payable by the Buyer in addition to the Price, each together with any value added tax or other sales tax thereon, on or at any time after dispatch of the Goods for delivery.
- 6.2 Unless otherwise agreed in writing, the Buyer shall make payment for the Goods in pounds sterling on or before the 30th day following the date of invoice, save that all sums payable to the Seller under a Purchase Contract will become due immediately upon termination of that Purchase Contract.
- 6.3 If any sum payable under a Purchase Contract is not paid on or before it is due then the Seller may, without prejudice to its other rights (i) charge the Buyer interest at an annual rate of four (4) per cent above the base lending rate from time to time of National Westminster Bank Plc, to be calculated on a day to day basis on the balance outstanding from the due date until payment is made in full (whether before or after judgment) (ii) withhold or suspend further deliveries of the Goods until payment of all overdue sums has been made, and/or (iii) require any additional satisfactory securities.
- 6.4 Payment shall be deemed not to have been made until any and all transfers, cheques, drafts and bills by which payment is to be effected, have been cleared or honoured (as the case may be). Time shall be of the essence in respect of the payment timescales set out in this clause 6 and any timescales which may be substituted for them by the agreement in writing of the parties.
- 6.5 Save as otherwise expressly provided in the Purchase Contract or required by law, neither party shall purport to set off, withhold or deduct any payments claimed or due to the other under the Purchase Contract or any other contract made between them including on account of any counter-claim.
- 6.6 The Seller may appropriate any payment made by the Buyer to the Seller to such of the invoices for the Goods as the Seller thinks fit, despite any purported appropriation by the Buyer.
- 7. Title and Lien**
- 7.1 The Seller shall retain legal and beneficial ownership of the Goods until it has received payment in full in cleared funds of all sums due for all Goods supplied to the Buyer and all other sums which are or which become due to the Seller from the Buyer on any account whatsoever. The Seller shall be entitled to recover payment for the Goods when due (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- 7.2.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.2.2 store the Goods (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- 7.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.2.4 maintain the Goods in satisfactory saleable condition; and
- 7.2.5 keep the Goods insured for their full Price against all risks to the reasonable satisfaction of the Seller, whenever requested by the Seller produce a copy of the policy of insurance to the Seller and procure that any insurance proceeds received in respect of lost or damaged Goods are paid to the Seller, to the extent required to satisfy the indebtedness of the Buyer to the Seller.
- 7.3 Subject to clause 7.5, the Seller licences the Buyer to use and re-sell in the ordinary course of its business Goods which belong to the Seller provided that the Buyer shall be permitted to make sales solely on the following conditions:
- 7.3.1 any sale shall be effected at full market value by the Buyer acting on his own account and the Buyer shall deal as principal when making such a sale;
- 7.3.2 such part of all monies received from any such sale as represents the amount owed to the Seller shall be held on trust for the Seller to settle any sums due in respect thereof to the Seller. Such monies shall be placed to the credit of a separate fiduciary bank account which shall not be permitted to become overdrawn and shall not be released to the Buyer until payment for the Goods has been received; and
- 7.3.3 the Buyer shall include retention of title clause in the form of this clause 7 in its sale contract with its customer.
- 7.4 The Buyer's right to possession, use and resale of the Goods shall terminate immediately:
- 7.4.1 if the Buyer becomes Insolvent or on the Seller giving the Buyer written notice that it has any concerns regarding the financial standing of the Buyer;
- 7.4.2 if the Buyer fails to pay any sum due to the Seller under the Purchase Contract on or before the due date or if the Buyer is in breach of any of its obligations under this Agreement or any other contract between the Seller and the Buyer;
- 7.4.3 if the Buyer encumbers or in any way charges any of the Goods; or
- 7.4.4 if the Purchase Contract in respect of the Goods terminates for any reason.
- 7.5 The Seller shall have the right without prejudice to any other remedies:
- 7.5.1 to enter without prior notice any premises where Goods owned by it are located to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to repossess and/or dispose of any Goods owned by it so as to discharge any sums owed to it by the Buyer under the Purchase Contract or any other contract entered into between the Seller and the Buyer (and the Buyer grants the Seller an irrevocable licence in this regard);
- 7.5.2 to require the Buyer not to resell or part with possession of any Goods owned by the Seller until the Buyer has paid in full all sums owed by it to the Seller under the Purchase Contract or any other contract entered into between the Seller and the Buyer; and/or
- 7.5.3 where the Buyer's right to possession, use and resale of the Goods has terminated, to withhold delivery of any undelivered Goods and stop any Goods in transit.
- 7.6 If the Buyer's right to possession, use and resale of the Goods terminates in accordance with clause 7.4, the Seller shall be entitled to issue the Buyer with a note to reverse any outstanding invoice for all or any part of the Price of the Goods together with value added tax thereon. Unless the Seller expressly elects otherwise any contract between it and the Buyer for the supply of Goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this clause 7.
- 7.7 The Seller's rights contained in this clause 7 shall survive termination of the Purchase Contract however arising.
- 8. Warranty**
- 8.1 The Seller warrants that on delivery the Goods will, subject to clause 8.2, conform in all material respects to the Seller's standard Specification.
- 8.2 The Seller reserves the right to make any changes to the Specification for any of the Goods which:-
- 8.2.1 are required to conform with any applicable safety or other statutory or regulatory requirements; and/or
- 8.2.2 do not materially alter the quality or performance of the Goods,
- and the Buyer shall not be entitled to reject the Goods by reason of such changes.
- 8.3 The information contained in any Publication and any recommendations given by or on behalf of the Seller (including with respect to methods of storing, using or applying the Goods, the purposes for which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in connection with any other materials) are (i) not part of the Purchase Contract, (ii) based on data available to the Seller at the time of the Publication or the time of the provision of such recommendations, and (iii) provided by the Seller in the belief that they are as accurate as reasonably possible and for the sole purpose of giving an approximate idea of the Goods represented by or described, but no responsibility can be accepted by the Seller for any loss or liability occasioned by any person acting or refraining from acting as a result of the contents of any Publication or any recommendations. The Seller cannot guarantee that the results described in any Publication or any recommendations will be achieved by others if the Seller has not participated in the testing process. The information in any Publication or recommendations is intended for use by technically trained personnel at their discretion and risk and is not a substitute for specific professional or technical advice. The Seller therefore makes no warranty of merchantability or fitness for a particular purpose or any express or implied warranty in respect of the information in any Publication or any recommendations and this is not a sale by sample.
- 8.4 Any Goods delivered shall be delivered with a certificate of analysis setting out the specific value for particular characteristics of the Goods. If these values are within the acceptable range for those characteristics as set out in the Specification for those Goods, those Goods shall be deemed to conform to the Specification.
- 8.5 If, within a period of 6 months from the date of delivery of the Goods or such longer period(s) as may be set out in the Specification or Purchase Contract in respect of such Goods (the "Warranty Period"), the Goods or any part of them, are proved to the reasonable satisfaction of the Seller not to comply with the warranty at clause 8.1 ('non-conformity' or 'breach'), the Seller will either, at the Seller's option refund the Price of or replace, free of charge, any

- such non-conforming Goods (or any part of such Goods). If the Seller does this the Seller shall have no further liability to the Buyer. If the Seller does not do this within reasonable time, it will instead be liable to pay the Buyer a sum equal to 125% of the Price of the non-conforming Goods net of any sums that the Buyer has paid the Seller for such Goods, and this will be the Buyer's sole remedy in respect of such non-conforming Goods. The Seller may require as a condition of any replacement or refund that the non-conforming Goods are returned to the Seller.
- 8.6 The Seller shall not have any liability for a breach of the warranty at clause 8.1 if and to extent that:
- 8.6.1 the relevant breach was caused or exacerbated by the Buyer not using the Goods in accordance with any instructions or recommendations of the Seller or any manufacturer or by improper handling or storage;
- 8.6.2 the Goods have been adjusted, mixed, altered, or adapted by any party other than the Seller (other than third parties authorised by the Seller to undertake such adjustment, mixing, alteration, or adaptation);
- 8.6.3 the Goods are not, at the Seller's option, either made available to the Seller for inspection or returned to the Seller (at the Buyer's cost but subject to clause 8.9);
- 8.6.4 the relevant breach was caused by fair wear and tear;
- 8.6.5 the Buyer makes further use of the relevant Goods after discovering the relevant breach; or
- 8.6.6 notice of the breach should have been but was not given by the Buyer to the Seller under clause 8.7.
- 8.7 Any breach or suspected breach in the Goods must be notified in writing by the Buyer to the Seller within (i) 21 days of delivery of the Goods where the breach should be apparent on reasonable inspection or (ii) within 3 days of the breach coming to the knowledge of the Buyer where the breach is not one which should be apparent on reasonable inspection (provided that the Buyer may only notify the Seller about a breach which is not one which should be apparent on reasonable inspection within 6 months from the date of delivery of the Goods). If the Buyer does not so notify the Seller, the Buyer shall be deemed to have accepted the Goods, as having been delivered in all respects in accordance with the Purchase Contract and shall not be entitled to reject the Goods and, subject to clause 9.5, the Company shall have no liability whatsoever for such breach.
- 8.8 Where Goods have been replaced with new Goods, the replaced Goods will belong to the Seller. The warranty under clause 8.1 shall apply to any Goods which are repaired or new Goods which are replaced under clause 8.5 for the full Warranty Period set out in clause 8.5.
- 8.9 Any transportation charges incurred by the Buyer in returning the Goods shall be reimbursed by the Seller if the Seller refunds the Price of the Goods or replaces the Goods in accordance with clause 8.1.
- 8.10 Subject to clause 9.5, all conditions, warranties and other terms which would be implied by law or otherwise (whether by statute, common law or otherwise) are hereby excluded. The Seller provides no other warranties.
9. **Liability**
- 9.1 **Subject to clauses 9.3 to 9.5, the Seller's aggregate liability in relation to any Purchase Contract (whether in respect of breach of contract, misrepresentation, tort (including negligence or breach of statutory duty) or for any liability under any indemnity or otherwise) shall not exceed 125% of the Price paid or payable under that Purchase Contract.**
- 9.2 **Subject to clauses 9.3 to 9.5, the Seller's aggregate liability in relation to this Agreement which is not attributable to any particular Purchase Contract(s) (whether in respect of breach of contract, misrepresentation, tort (including negligence or breach of statutory duty) or for any liability under any indemnity or otherwise) shall be limited to £250,000.**
- 9.3 **Subject to clause 9.5, the Seller shall under no circumstances be liable to the Buyer in contract, misrepresentation, tort (including negligence or breach of statutory duty) under any indemnity or otherwise for any loss (whether direct, indirect or consequential) of profit, business, anticipated savings or revenue or for any indirect or consequential loss, damage, cost or expense of any kind whatsoever and howsoever arising either from the breach or non-performance of any of its obligations under this Agreement or from the supply of or intended use of the Goods (even if the Seller has been advised of the possibility of such potential loss).**
- 9.4 **Subject to clause 9.5, the Seller shall not be liable to the Buyer for any claims under or in connection with any Purchase Contract that are not brought within 6 months of the end of the applicable Warranty Period in respect of the Goods which are the subject of such Purchase Contract.**
- 9.5 **Nothing in this Agreement shall limit or exclude the Seller's liability (if any) (i) for breach of Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (ii) for fraud or fraudulent misrepresentation (iii) personal injury or death resulting from the Seller's negligence (iv) arising under Section 2(3) of the Consumer Protection Act 1987 or (v) for any other matter in respect of which it would be unlawful for the Seller to limit or exclude liability.**
- 9.6 **The Buyer shall fully indemnify the Seller in respect of all liabilities, damages, injuries, actions, suits, claims, demands, costs, charges, expenses, direct, indirect and consequential losses (all three of which terms include pure economic loss, loss of profits, loss of anticipated saving, depletion of goodwill and like loss), proceedings and legal costs and judgments which the Seller incurs or suffers as a consequence of any direct or indirect breach or negligent performance or failure in performance by the Buyer of the terms of any Purchase Contract or this Agreement or any acts or omissions of the Buyer in connection with the use of the Goods or otherwise.**
- 9.7 The Buyer shall be responsible for determining whether or not the Goods are suitable for the applications for which the Buyer shall use the Goods.
- 9.8 The Seller does not by virtue of this Agreement transfer any trade marks, copyright, patents, registered designs or other forms of intellectual property right to the Buyer.
10. **Regulations and Labelling**
- The Buyer shall be responsible for compliance with all relevant laws and regulations and for obtaining and maintaining at its expense any necessary import or export licences, customs clearance, exchange, control, consent or other authorisations and permits whatsoever and the Buyer shall ensure that the Goods are at all times labelled in such a way as to ensure the safety which a person is entitled to expect from the Goods.
11. **Termination**
- 11.1 If the Buyer (i) fails to make any payment due to the Seller on or before the due date, (ii) commits any other material breach of any of the provisions of any Purchase Contract, if remediable, fails to remedy that breach within 30 days after having received written notice of the breach, (iii) becomes Insolvent, or (iv) should the Seller have reasonable cause to believe that any of the foregoing events is likely to occur, the Seller may by notice in writing to the Buyer terminate any or all Purchase Contracts, being the exercise of any or all or a combination of the rights set out in clause 11.2.
- 11.2 Where this clause applies pursuant to 11.1, the Seller may without prejudice to any other rights it may have: (i) suspend or cancel any undelivered part of any Purchase Contract and/or (ii) stop any Goods in transit under any Purchase Contract and/or (iii) require payment in advance or satisfactory security for further deliveries under any Purchase Contract, and/or (iv) require immediate payment of all amounts accrued but not yet due under any Purchase Contract.
- 11.3 Following termination of any Purchase Contract (i) any other terms and conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract shall continue in force, and (ii) all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
12. **Force Majeure**
- 12.1 Notwithstanding clause 3.5, the Seller shall not be liable to the Buyer for any loss or damage caused to or suffered by the Buyer as a direct or indirect result of the supply of the Goods (or any part of them) by the Seller being prevented, restricted, hindered or delayed by reason of any Force Majeure Event and in these circumstances the Seller expressly reserves the right to cancel or suspend the whole or any part of any Purchase Contract by giving not less than 14 days written notice to that effect to the other party.
13. **Confidentiality**
- 13.1 Each party will keep confidential and shall not disclose any and all Confidential Information that it may acquire from the other party. For the purposes of these Conditions of Sale, 'Confidential Information' shall refer to the commercial terms of any Purchase Contract and all information in respect of the business of a party including any other information which, if disclosed, will be liable to cause harm to that party. Each party will not use the Confidential Information of the other party for any purpose other than to perform its obligations or receive any benefit under this Agreement.
- 13.2 Each party is permitted to disclose Confidential Information to its officers and employees and professional advisors who need access to that Confidential Information for the purposes of this Agreement, and each party will ensure that its officers and employees and professional advisors comply with the confidentiality obligations in this clause 13.
- 13.3 The obligations on each party set out in clauses 13.1 and 13.2 will not apply to any information which is publicly available or becomes publicly available through no act or omission of that party, or if that party is required to disclose by order of a court of competent jurisdiction or due to any law or regulation or any regulatory authority (but then only to the extent of such required disclosure and upon giving notice to the other party if permitted).
14. **General**
- 14.1 Delay in exercising, or a failure to exercise, any right or remedy in connection with any Purchase Contract shall not operate as a waiver of that right or remedy, and any waiver shall not operate as a waiver of a subsequent breach. A single or partial exercise of any right or remedy shall not preclude any other or further exercise of that right or remedy, or the exercise of any other right or remedy.
- 14.2 The Purchase Contract is personal to the Buyer who shall not assign its rights or delegate or sub-contract its performance or charge the benefit thereof or deal in any other manner with any of its rights or obligations under this Agreement without the Seller's express written consent.

- 14.3 The terms of each Purchase Contract constitute the entire agreement between the parties on its subject matter and supersede and terminate all existing and/or prior agreements or arrangements (except for any written confidentiality agreements). Neither party enters into any Purchase Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other party or any other person) which is not expressly set out in that Purchase Contract, and the only remedies available for breach of any representation or statement which was made prior to entry into that Purchase Contract and which is set out in that Purchase Contract shall be for breach of contract. Nothing in this clause 14.3 shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 14.4 If any of the terms and conditions of the Agreement (or part thereof) shall be found by any court or body of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term or condition shall be deemed to be severed from the Agreement and this shall not affect any other term or condition (or the other part of the term or condition of which such illegal, unlawful, void or unenforceable part forms part) which shall remain in full force and effect.
- 14.5 Any notice must be hand delivered, mailed or faxed, properly addressed to the other party at their address or facsimile number stated in any order or to the other party's registered office or as notified to it by the other party from time to time or at the last known address given by such party to the other party. Any such notice shall be deemed delivered, if delivered by hand, at the time of delivery, and if by mail, at 9.00am on the second business day after posting, and if faxed, at the time of confirmation of completion of transmission by way of a transmission report, save that if any such confirmation is outside normal business hours it shall be deemed to be served at 9.00am on the next business day. All references to time and day shall be the time and day of the recipient of the notice and references to normal business days and normal business hours shall be normal business days and normal business hours in the country in which the notice is being served.
- 14.6 Nothing in this Agreement shall constitute or be deemed to constitute a partnership or other form of joint venture between the parties or constitute or be deemed to constitute either party as the agent or employee of the other for any purpose whatsoever.
- 14.7 No person who is not a party to this Agreement is entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.8 References to (i) the singular include the plural and vice versa and references to any gender include every gender (ii) a 'person' includes any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality), (ii) a 'party' or to the 'parties' shall mean the Seller and/or the Buyer as the context requires and shall (to the extent applicable) include a reference to its or their permitted assigns (iii) a third party shall mean any person other than the parties (iv) any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time, and (v) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than that of England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction.
- 14.9 Any words following the words 'include', 'includes', 'including', 'in particular' or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

15. Disputes

- 15.1 If the Buyer's principal place of business is located in, or if the Buyer has substantial assets in, in each case, (i) the UK, (ii) a country with which the UK has a reciprocal enforcement treaty, or (iii) a contracting State of the Brussels Regulation or Lugano Convention, then (provided that such principal place of business or location of substantial assets shall be determined by Seller in its sole discretion acting in good faith), any dispute or claim arising out of or in connection with this Agreement shall be resolved by proceedings brought in the courts of England and Wales, which courts shall have exclusive jurisdiction. Nothing in this clause 15.1, however, shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings by the Seller in any one or more jurisdictions preclude the taking of proceedings by the Seller in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 15.2 If clause 15.1 does not apply, and if the Buyer's principal place of business is located in, or if the Buyer has substantial assets in, in each case, a contracting state of the New York Convention, then (provided that such principal place of business or location of substantial assets shall be determined by Seller in its sole discretion acting in good faith) any dispute or claim arising out of or in connection with this Agreement shall be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce, before a sole arbitrator appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be London and the language to be used in the arbitration shall be English.
- 15.3 Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their 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.

- 15.4 If neither clause 15.1 nor clause 15.2 applies, then any dispute or claim arising out of or in connection with this Agreement shall be resolved by proceedings brought in the courts of England and Wales, which courts shall have exclusive jurisdiction. Nothing in this clause 15.4, however, shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings by the Seller in any one or more jurisdictions preclude the taking of proceedings by the Seller in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 15.5 Regardless of whether clause 15.1, 15.2 or 15.4 applies, a party seeking injunctive relief may always pursue an action for such relief in any court of competent jurisdiction.
16. **Governing Law**

The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by English law.