

Standard Terms and Conditions of Sale for William Blythe Limited

1. Definitions and interpretation

- 1.1 In these Conditions the following words have the following meanings:
- Buyer:** the person, firm or company purchasing the Goods
- Conditions:** these standard terms and conditions of sale as amended from time to time in accordance with Condition 2.3
- Contract:** any contract between the Seller and the Buyer for the sale and purchase of the Goods formed in accordance with Condition 3.1
- Goods:** any goods or materials which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract has the meaning ascribed to it in Condition 9.9
- Insolvent:** means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions
- REACH:** the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation 1907/2006
- REACH Compliance:** in relation to the Goods, compliance with the requirements of REACH and "REACH Compliant" will be construed accordingly
- Seller:** William Blythe Limited (registered number 02628212)
- Warranty Period:** has the meaning ascribed to it in Condition 11.2
- 1.2 Unless the context otherwise requires:
- 1.2.1 references to "a person" include any individual, body corporate, association, partnership, joint venture, government, local or municipal 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); and
- 1.2.2 references to any statute or statutory provision will include any subordinate legislation made under it and will 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
- 1.2.3 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them; and
- 1.2.4 the rule known as the ejusdem generis rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- 1.2.5 the singular will include the plural and vice versa and any gender includes the other gender.

2. Application

- 2.1 The Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms which the Buyer purports to apply under any purchase order, confirmation or other document).
- 2.2 Should any part of these Conditions be found by any court or tribunal or authority of competent jurisdiction to be wholly or partly illegal, invalid, void, unenforceable or unreasonable, then only the offending part shall be deemed severed from these Conditions and the remaining Conditions shall continue in force.
- 2.3 Save as otherwise expressly provided in the Contract, no variation to these Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of the Seller.

3. Quotation and Purchase Order

- 3.1 Any quotation given by the Seller (whether in writing or orally) is only an invitation to the Buyer to make an offer and each purchase order or acceptance of a quotation for Goods will be deemed to be an offer by the Buyer to purchase the Goods upon these Conditions. The Contract is formed when the purchase order is accepted by the Seller in accordance with Condition 3.2. No purchase order placed by the Buyer on the Seller (whether or not in pursuance of a quotation) shall be binding on the Seller unless and until it is accepted by the Seller and nothing in these Conditions will oblige the Seller to accept any purchase order from the Buyer.
- 3.2 Purchase orders will only be treated as having been accepted by the Seller if the acceptance has been confirmed in writing by the Seller or upon the Goods being delivered, whichever occurs first.
- 3.3 Acceptance of delivery of the Goods will be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 3.4 The Buyer must ensure the accuracy and completeness of the terms of any purchase order that it submits to the Seller.
- 3.5 Unless otherwise agreed in writing, any quotation is valid only for a period of thirty (30) days from its date of issue provided that the Seller has not previously withdrawn it by written or oral notice to the Buyer, and will be subject to availability of the Goods.
- 3.6 **Subject to Condition 8.5, the Buyer may not cancel, postpone or vary the Contract except with the written consent of the Seller. The Seller may cancel the Contract at any time prior to delivery.**
- 3.7 **If the Buyer cancels the Contract under Condition 3.6 or cancels a purchase order in accordance with Condition 8.5, the Buyer agrees that it will bear the risk of any fall in the price of the tin purchased by the Seller to execute the cancelled Contract and/or purchase order and the Buyer agrees to pay the Seller an amount equal to the fall in price of such tin between the date of the Contract and/or purchase order and the date of cancellation.**

4. Assignment and Subcontracting

- 4.1 The Contract is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent. The Buyer shall not be entitled to transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.
- 4.2 The Seller will be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract and to sub-contract any of its obligations.

5. Prices

- 5.1 Unless otherwise agreed in writing between the parties the prices for the Goods

("Prices") will be the Seller's Ex-Works prices in force on the date on which the relevant purchase order is accepted by the Seller and are exclusive of:

- 5.1.1 taxes (including value added tax), import duties or levies (as applicable); and
- 5.1.2 any costs of packaging, insurance, carriage and delivery of the Goods, which (if applicable) will be added to the Prices at the time of issuing an invoice.
- 5.2 No discounts or rebates will apply unless agreed between the Seller and the Buyer in writing.
- 5.3 Unless otherwise agreed in writing between the parties, the Seller reserves the right to vary the Prices, subject to written notification being given to the Buyer, to take account of:
- 5.3.1 any variations in the costs, taxes and rates of exchange; and/or
- 5.3.2 any variation in the specification for the Goods requested by the Buyer, any change in delivery dates or any delay caused by the Buyer which results in an increase in the cost to the Seller; and/or
- 5.3.3 any extra expense as a result of the Buyer's instructions or lack of instructions or to comply with the requirements referred to in Condition 10.1.
- 5.4 The Buyer has the right to cancel any unfulfilled purchase orders (or unfulfilled part of any purchase orders) to which a price variation relates by giving written notice to that effect to the Seller either within 2 working days of having been notified of the price variation or prior to the Seller despatching the relevant Goods, whichever occurs first.

6. Quantities

- 6.1 The quantity and description of the Goods will be as set out in the acknowledgement of order issued by the Seller to the Buyer, or as otherwise agreed by the parties in writing. All descriptions, illustrations, technical specifications, particulars of weight or dimensions, drawings, descriptive matter, specifications and advertising issued by the Seller or contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods represented by or described in them. They will not form part of the Contract and this is not a sale by sample.
- 6.2 **Unless otherwise agreed in writing by the parties, the weight or volume of the Goods is the weight or volume as ascertained by the Seller which will be accepted by both parties as correct and will form the basis on which the invoice will be prepared and issued in accordance with Condition 15.2. Both parties reserve the right to inspect, or have independently verified, the accuracy of the weighbridge being used. The Seller will not be responsible for any weight loss during transit.**
- 6.3 The Seller may deliver against any purchase order an excess or deficiency of up to ten per cent of the weight or volume ordered without any liability whatsoever, save that the invoice value shall be adjusted accordingly so that the Buyer only pays for the actual weight or volume delivered. The Seller may deliver (and invoice) by instalments and each instalment will be deemed a separate Contract and no cancellation or termination of any one Contract relating to an instalment will entitle the Buyer to repudiate or cancel any other Contract or instalment.

7. Import Licences

All import licences and other required consents, permits and/or approvals are the Buyer's responsibility and the Buyer shall not be discharged from its obligations under the Contract by any partial or total prohibition of imports or by the refusal or non-availability of any import licence, consent, permit and/or approval or by the imposition of any terms or conditions upon the grant of such licence, consent, permit and/or approval. If required by the Seller, the Buyer shall make any such licences, consents, permits and/or approvals available to the Seller prior to despatch.

8. Delivery

- 8.1 Except as otherwise agreed by both parties in writing all Goods are delivered EXW (ex works) Seller's manufacturing plant stated in the relevant purchase order. EXW (ex works) is as defined in INCOTERMS 2010. The Buyer will provide at its expense adequate and appropriate equipment and manual labour for loading or off-loading (as appropriate) the Goods.
- 8.2 **All delivery dates and times are estimates and not legally binding on the Seller, which will use its reasonable endeavours to make available for collection or deliver (as appropriate) on time. If no delivery dates and/or times are specified, delivery will be within a reasonable time. Time of delivery will not be of the essence.**
- 8.3 **The Seller will be deemed not to be in breach of the Contract, and (for the avoidance of doubt) will not be liable in contract, tort or otherwise howsoever and whatever the cause thereof, to the Buyer for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar), costs, damages, charges or expenses caused directly or indirectly by any delay or failure in the delivery of the Goods (even if caused by the Seller's negligence) except as set out in this Condition 8.**
- 8.4 Any additional costs incurred by the Seller for express deliveries undertaken at the request of the Buyer are for the account of the Buyer and will be added to the Prices and invoiced in accordance with Condition 15.2.
- 8.5 **Any delay in delivery will not entitle the Buyer to cancel the purchase order unless and until the Buyer has given 14 days' written notice to the Seller requiring the delivery to be made and the Seller has not fulfilled the delivery within that period. If the Buyer cancels the purchase order in accordance with this Condition 8.5 then:**
- 8.5.1 **the Seller will refund the Buyer any sums which the Buyer has paid to the Seller in respect of that purchase order or part of the purchase order which has been cancelled; and**
- 8.5.2 **the Buyer will be under no liability to make any payments under Condition 15 in respect of that purchase order or part of the purchase order which has been cancelled.**
- 8.6 **Subject to Condition 13, in the event of non-delivery of the Goods following the service of a written notice by the Buyer under Condition 8.5 the Seller's liability for such non-delivery will 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 relevant Goods. The Seller will have no liability for any failure to deliver to the extent that such failure is caused by the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If the Buyer fails to provide written notice of non-delivery in accordance with Condition 8.5, the Seller shall have no liability whatsoever to the Buyer for such non-delivery and the Buyer shall be liable for the Price of the Goods.**
- 8.7 If the Buyer refuses or fails to take delivery of any of the Goods when they are ready

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- or tendered for delivery (as appropriate) or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered on time (except solely on account of the Seller's default), the Goods will be deemed to have been delivered on or by the due date and (without prejudice to its other rights) the Seller may:
- 8.7.1 store or arrange for storage of the Goods until actual delivery or sale in accordance with Condition 8.7.3 and charge the Buyer for all related costs and expenses (including storage and insurance); and/or
- 8.7.2 recover from the Buyer all wasted transport costs resulting from the Buyer's refusal or failure to take delivery of the Goods when tendered for delivery; and/or
- 8.7.3 following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the Price of the Goods under the Contract, having taken into account any charges related to the sale and any charges referred to in Conditions 8.7.1 and 8.7.2.
- 9. Risk and Ownership**
- 9.1 The risk in the Goods shall pass to the Buyer at the time of delivery or deemed delivery under Condition 8.
- 9.2 Notwithstanding delivery, the legal and beneficial ownership of the Goods shall remain vested in the Seller until the Seller has received in full in cleared funds:
- 9.2.1 all sums due to it in respect of the Goods; and
- 9.2.2 all other sums which are or which become due to the Seller from the Buyer on any account whatsoever.
- 9.3 Until ownership of the Goods has passed to the Buyer, the Buyer holds the Goods in trust for the Seller as the Seller's bailee and undertakes to:
- 9.3.1 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 as they are clearly identified as the property of the Seller; and
- 9.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 9.3.3 maintain the Goods in satisfactory condition; and
- 9.3.4 have 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.
- 9.4 The Buyer is entitled to use the Goods in its manufacturing process notwithstanding that ownership in such Goods has not passed to it.
- 9.5 The Buyer's right to possession and use of the Goods shall terminate immediately:
- 9.5.1 if payment of any invoice under the Contract by the Buyer becomes overdue; or
- 9.5.2 if the Buyer becomes Insolvent; or
- 9.5.3 on the Seller giving the Buyer written notice that it has any concerns regarding the financial standing of the Buyer; or
- 9.5.4 if the Buyer is in breach of any of its obligations under the Contract or any other contract between the Seller and the Buyer; or
- 9.5.5 if the Buyer encumbers or in any way charges any of the Goods; or
- 9.5.6 if the Contract terminates for any reason.
- 9.6 The Seller shall be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 9.7 The Buyer grants the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession and use has terminated, to recover them.
- 9.8 If the Buyer's right to possession and use of the Goods terminates in accordance with Condition 9.5, the Seller will be entitled to issue the Buyer with a credit note for all or any part of the Prices together with taxes (including VAT) thereon.
- 9.9 In this Condition 9, "Insolvent" has the following meaning in relation to the Buyer:
- 9.9.1 it passes a resolution for its winding-up or a winding up order is made against it by a court or it has an administrator or an administrative receiver or a receiver or provisional liquidator appointed over its assets, income or any part thereof, or it is subject to a notice of intention to appoint an administrator or it enters into an arrangement with its creditors or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 9.9.2 it has any distraint, execution or other process levied or enforced on any of its property; or
- 9.9.3 it ceases to trade or appears in the reasonable opinion of the Seller likely or is threatening to cease to trade; or
- 9.9.4 it has a change in its management and/or control as defined by section 416 Income and Corporation Taxes Act 1988; or
- 9.9.5 the equivalent of any of the above occurs to the Buyer in another jurisdiction to which the Buyer is subject.
- 9.10 The Seller's rights contained in this Condition 9 will survive termination of the Contract however arising.
- 10. Warranty and Liability**
- 10.1 Subject to the terms set out below and unless otherwise specified in writing, the Seller warrants that on delivery the Goods shall comply with the Seller's specification for the Goods. The Seller reserves the right to make any changes to the specification of the Goods which:
- 10.1.1 are required to conform with any applicable safety, performance or other statutory or regulatory requirements; and/or
- 10.1.2 do not materially alter the quality or performance of the Goods, and the Buyer will not be entitled to reject the Goods, by reason of such changes.
- 10.2 **Subject to the remainder of this Condition 10, if the Goods are proved to the reasonable satisfaction of the Seller not to comply with the warranty at Condition 10.1 due to defects in materials, workmanship or composition (other than a composition specified by the Buyer) the Seller will either, at the Seller's option, replace such Goods or refund the Price of the Goods. If the Seller does this it will have no further liability to the Buyer. If the Seller does not do this, it will be liable to pay the Buyer a sum equal to 125% of the Price of the Goods that the Buyer has paid to the Seller in full for such Goods.**
- 10.3 The Buyer agrees that it will, and that it will procure that its officers, employees, agents or sub-contractors will, only use or apply the Goods:
- 10.3.1 for the purposes and in the manner expressly set out in the Seller's written instructions (including e-mail instructions) supplied by the Seller to the Buyer with, or in relation to, the Goods (including any applicable Material Safety Data Sheets), if any such instructions are supplied by the Seller to the Buyer (the Buyer acknowledging that the Seller shall not in any circumstances (except where required by law) be obliged to provide it with any such instructions); and
- 10.3.2 in accordance with any applicable BSI and ISO international standards published from time to time, and the Buyer acknowledges and agrees that the Seller will not be liable under Conditions 10.1 or 10.2 if the Goods are used or applied in any way other than in accordance with this Condition 10.3.
- The Seller will not be liable under Conditions 10.1 or 10.2 or under any other provision of these Conditions where:**
- 10.4.1 notice of the breach should have been but was not given to the Seller under Condition 11; or**
- 10.4.2 the relevant defect was caused by damage in transit after delivery; or**
- 10.4.3 the defect in the Goods arises from wilful damage or negligence of the Buyer, its employees, agents or sub-contractors; or**
- 10.4.4 the relevant defect was caused or exacerbated by the Buyer using or applying the Goods in any way other than in accordance with Condition 10.3 or by any other improper use, handling, alteration, maintenance, storage or failure to comply with instructions provided with, or given by the Seller (whether oral or in writing) in relation to the Goods (if any), by the Buyer, its officers, employees, agents or subcontractors; or**
- 10.4.5 the Buyer makes further use of the relevant Goods after discovering the relevant breach.**
- 10.5 Any Goods which have been replaced will belong to the Seller and the Seller may require as a condition of any replacement or refund that the defective Goods are returned to the Seller. Any replacement Goods will be liable to replacement or refund under the terms specified in Conditions 10.1 to 10.4 (inclusive) for the unexpired portion of the original Warranty Period.
- 10.6 If any Goods have been modified or subjected to any process of manufacture or adaptation after delivery then the Buyer will be deemed to have accepted such Goods as being in all respects in accordance with the Contract.
- 10.7 **Subject to Condition 10.12, the remedies set out in this Condition 10 will be the sole and exhaustive remedies of the Buyer in respect of any and all non-conformance of the Goods with the Seller's specification. All warranties, conditions and other terms implied by law (whether as to quality, description or otherwise and whether by statute, common law or otherwise) are excluded from these Conditions and all Contracts.**
- 10.8 **Unless otherwise agreed in writing by the Seller, the Seller does not warrant the fitness of the Goods for any particular purpose, even if that purpose is known to the Seller and no such warranty is to be implied from the name or description under which the Goods are sold, nor from any advice or recommendation given by the Seller, its employees, agents and/or sub-contractors. Any suggestion or representation concerning any possible use or application of the Goods made by the Seller in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Buyer to satisfy themselves fully as to the suitability of the Goods for any particular purpose.**
- 10.9 **The Buyer will 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 savings, 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 the Contract or any acts or omissions of the Buyer in connection with the use or application of the Goods or otherwise.**
- 10.10 **Subject to Conditions 10.2 and 10.12, the Seller's maximum aggregate liability arising out of or in connection with the Contract, whether in tort (including negligence and breach of statutory duty), misrepresentation, under statute or otherwise, howsoever caused including any liability arising directly or indirectly out of a breach of, or a failure to perform or defect or delay in performance of, any of the Seller's obligations under the Contract (whether in relation to the supply or use of the Goods, or of the packages, pallets, or containers by which the Goods are delivered or otherwise) and/or where caused by a deliberate personal repudiatory breach by the Seller, shall be limited to 125% of the Price paid or payable under the Contract.**
- 10.11 **The Seller shall not be liable to the Buyer for any:**
- 10.11.1 loss of profit (direct or indirect); or**
- 10.11.2 loss of revenue, loss of production or loss of business (in each case whether direct or indirect); or**
- 10.11.3 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect); or**
- 10.11.4 loss of anticipated saving or loss of margin (in each case whether direct or indirect); or**
- 10.11.5 liability of the Buyer to third parties (whether direct or indirect); or**
- 10.11.6 indirect, consequential or special loss,**
- which arise out of or in connection with the Contract, whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, under statute or otherwise, howsoever caused including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of the Seller's obligations under the Contract and/or where caused by a deliberate personal repudiatory breach by the Seller subject always to Condition 10.12.**
- 10.12 Nothing in these Conditions will operate to exclude or restrict one party's liability (if any) to the other:
- 10.12.1 for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977); or
- 10.12.2 for its fraud or fraudulent misrepresentation or the fraud or fraudulent misrepresentation by a person for whom it is vicariously liable; or
- 10.12.3 for breach of its obligations under Section 12 Sale of Goods Act 1979; or
- 10.12.4 for breach of its obligations arising under Section 2 Supply of Goods and Services Act 1982; or
- 10.12.5 for breach of its obligations arising under Section 8 Supply of Goods (Implied Terms) Act 1973; or
- 10.12.6 for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

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11. **Notification of Defects, Damage or Loss**
- 11.1 All Goods should be examined and tested by the Buyer on delivery.
- 11.2 **Whether or not any such examination is made in accordance with Condition 11.1, any claim by the Buyer in respect of any defect or suspected defect in the Goods must be made in writing to the Seller within:**
- 11.2.1 **7 days of delivery where the defect should be apparent on a reasonable examination in accordance with Condition 11.1; or**
- 11.2.2 **7 days of the defect coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection,**
- and in any event not later than 6 months from the date of delivery of the Goods (the "Warranty Period") and before the Goods are used in the Buyer's manufacturing process. If the Buyer does not so notify the Seller, the Goods shall be deemed to have been accepted by the Buyer as having been delivered in all respects in accordance with the Contract and the Buyer will not be entitled to reject the Goods and, subject to Conditions 10.12, the Seller will have no liability whatsoever for such defect.**
- 11.3 **Subject to Condition 10.12 the Seller will not be liable to the Buyer for any claims under or in connection with the Contract that are not brought within 6 months of the end of the applicable Warranty Period.**
- 11.4 Any claim by the Buyer on account of quality shall be decided by reference to control samples drawn at the time of manufacturing the relevant Goods and retained in the Seller's laboratories. The results of the examination of such control samples shall be conclusive in all respects in regard to such claim.
- 12 **REACH**
- 12.1 The Buyer warrants, represents and undertakes to the Seller that it will promptly provide to the Seller such information as may reasonably be required from time to time in order to obtain and maintain REACH Compliance in respect of the Goods and that it shall comply with its obligations under REACH.
- 12.2 Without prejudice to any of its other rights or remedies, the Seller will have the right to terminate the Contract without any liability to the Buyer immediately upon written notice, if the Seller receives written notice from any competent authority, or in its reasonable opinion decides, that any of the Goods are not or will not become REACH Compliant.
- 13 **Force Majeure**
- 13.1 The Seller shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 13.2 A "Force Majeure Event" means acts of God, fire, accidents, strikes, lockouts or industrial disputes (whether such strikes, lockouts or industrial disputes affect the workforce of the Seller and/or any other person), storm, bad weather, lightning, earthquake, war, insurrection, riot, civil commotion, acts or threats of terrorism, Government regulations or interference, theft, malicious damage, shortage of labour, materials, fuel, utilities or transport, breakdown or failure of plant or machinery, defective materials, delay or non-performance by third parties or suppliers, delay or failure by the Buyer in giving instructions or any other cause whatsoever beyond the Seller's control.
- 13.3 In the event of a Force Majeure Event which gives rise to relief from liability under Condition 13.1 continuing for a period of more than 3 months, either party shall be entitled to cancel or suspend the whole or any part of any delivery, having given not less than 14 days' notice in writing to that effect to the other party.
- 13.4 The Buyer will continue to pay the Price for any Goods it receives notwithstanding the occurrence of the Force Majeure Event.
- 14 **Packaging**
- 14.1 If the Seller's delivery note states that the packages in which the Goods are delivered are returnable to the Seller, such packages shall be returned empty by the Buyer to the Seller's address stated on the delivery note in good condition, carriage paid, within three months of delivery. If such packages are not so returned they will be chargeable at replacement value and no credit will be due on packages for which a charge shall have been made by the Seller. "Packages" shall include minibulks, flexis, crates, boxes or other containers and pallets. Packaging laws applicable in the Seller's country of registration apply.
- 14.2 The loading or filling of transport equipment and/or packaging which has been made available by the Buyer shall take place at the risk of the Buyer, even if this is carried out by the Seller. The Seller is entitled to refuse to load or to fill packaging or equipment provided by the Buyer, if this does not comply, according to the judgement of the Seller, with applicable legislation.
15. **Payment**
- 15.1 The Buyer will pay the Prices to the Seller, together with any sums due to the Seller in respect of any of those items listed in Condition 15.2 (plus taxes (including VAT) thereon) in accordance with this Condition 15.
- 15.2 Unless otherwise agreed by both parties in writing:
- 15.2.1 the Seller will be entitled to invoice the Buyer for the Price of the Goods and any packaging, insurance, carriage and delivery costs payable by the Buyer in addition to the Prices on or at any time after despatching the Goods; and
- 15.2.2 invoices shall be paid by the Buyer within 30 days following the date on which the Seller's invoice is issued; and
- 15.2.3 all payments shall be made in pounds sterling in cleared funds.
- 15.3 Time shall be of the essence in respect of the payment timescales set out in Condition 15.2 and any timescales which may be substituted for them by the agreement in writing of the parties.
- 15.4 All sums payable to the Seller under the Contract will become due immediately upon termination of the Contract.
- 15.5 Invoices which are due must be paid in full without any deduction, set-off, restriction, condition or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.
- 15.6 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.
- 15.7 Where any sum owed by the Buyer to the Seller is overdue, or if at any time the credit standing of the Buyer has in the opinion of the Seller been impaired for whatever reason, the Seller may at its own absolute discretion demand payment of all outstanding balances whether due or not and cancel or suspend all outstanding orders and decline to make further deliveries except upon receipt of cash or satisfactory security.
- 15.8 Without prejudice to the Seller's other rights under the Contract, the Seller reserves
- the right to charge interest on any invoice not paid on or before the due date, at the rate of 8% per annum over the Bank of England base rate from the date on which payment is due until actual payment is made in full whether before or after any judgment..
16. **Intellectual Property**
- 16.1 No right or licence is granted to the Buyer in respect of the IPR of the Seller, except the right to use the Goods in the Buyer's ordinary course of business.
- 16.2 Without prejudice to the generality of Condition 16.1, recipes, formulae and other information given by the Seller to the Buyer for use in its manufacturing process remain in the ownership of the Seller and may not be given to a third party without the Seller's written authority.
- 16.3 The Buyer will not use the Seller's name, logo or other identification marks for the purposes of advertising or publicity without the prior written consent of the Seller.
- 16.4 No warranty or representation is given by the Seller that the Goods do not infringe the IPR of any person.
- 16.5 If the Goods have been manufactured to the specification or design of the Buyer, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including legal and other professional fees) actions, proceedings, judgments awarded and damages suffered or incurred by the Seller arising out of or in connection with any infringement of any IPR of any third party where such liability arises as a consequence of the specification supplied by the Buyer.
- 16.6 If the Seller develops a product for the specific requirements of the Buyer ("Instruction"), then all IPR created, composed, arranged or made in any other way whatsoever, pursuant to or arising from the Instruction shall vest in the Seller. To the extent necessary the Buyer hereby assigns to the Seller with goodwill, all the Buyer's IPR created, composed, arranged or made in any other way whatsoever, pursuant to or arising from the Instruction, waives in favour of the Seller any so called moral-rights which may accrue to the Buyer therein and undertakes to sign all documents and to do all things that may be necessary to record and perfect the transfer of the IPR contemplated in this Condition 16.6 and to assist the Seller to file and prosecute all such copyright, design, patent and trade mark applications as may be required by the Seller from time to time in its sole and absolute discretion.
17. **Termination**
- 17.1 If the Buyer:
- 17.1.1 commits a material breach of the Contract which cannot be remedied; or
- 17.1.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 days of a written notice setting out the breach and requiring it to be remedied being given by the Seller,
- the Seller may terminate the Contract immediately by giving written notice to that effect to the Buyer.
- 17.2 The Seller may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.
- 17.3 A material breach can be remedied if the Buyer can comply with the relevant obligation in all respects other than as to time of performance unless time of performance of such obligation is of the essence. For the avoidance of doubt, a failure by the Buyer to make any payment due to the Seller under the Contract on or before the due date will constitute a material breach.
- 17.4 Following expiry or termination of the Contract:
- 17.4.1 any other Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract shall continue in force; and
- 17.4.2 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.
- 17.5 The Seller will be entitled to suspend deliveries of Goods otherwise due to occur following service of a notice specifying a breach under Condition 17.1.2, until either the breach is remedied (if applicable) or the Contract terminates, whichever occurs first.
18. **General**
- 18.1 The Seller's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 18.2 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the future exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.
- 18.3 The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties. The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter and:
- 18.4.1 neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any representation, misrepresentation or statement (whether made by the other party or any other person) which is not expressly set out in the Contract; and
- 18.4.2 the only remedies available for misrepresentation or breach of any representation or statement which was made prior to entry into the Contract and which is expressly set out in the Contract will be for breach of contract; and
- 18.4.3 nothing in this Condition 18 will be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.
- 18.5 Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.
- 18.6 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 18.7 The parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the determination of any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
19. **Notices**
- 19.1 Any notice given in connection with the Contract must be in writing and must be delivered by hand or sent by prepaid first class or special delivery post to the Seller

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or the Buyer, as the case may be, at its address as provided by either of the parties or to either party's registered office.

19.2 Notices will be deemed to have been received:

19.2.1 if sent by pre-paid first class or special delivery post, at 9.00am on the second working day (in England) after posting (exclusive of the day of posting); and

19.2.2 if delivered by hand, on the day of delivery,

provided that, where in the case of delivery by hand such delivery occurs after 4.00pm on any working day (in England), service will be deemed to occur at 9.00am on the next following working day (in England).

19.3 If any notices are given otherwise than in accordance with this Condition 19 (including by email) such notices will not be valid.