

BLAGDEN SPECIALTY CHEMICALS LTD

GENERAL TERMS AND CONDITIONS OF SALE FOR THE PROVISION OF GOODS AND SERVICES

These Terms and Conditions (together with the documents referred to) will govern the contract formed between the Company and the Buyer for the supply of the Goods and/or Services, and shall apply to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following definitions apply:

Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Buyer:	the person, firm or company buying Goods and/or Services from the Company.
Company:	means Blagden Specialty Chemicals Ltd registered with Company No 03914333 whose registered office address is Osprey House, Black Eagle Square, Westerham, Kent, TN16 1PA.
Conditions:	the terms and conditions set out in this document.
Contract:	the contract between the Company and the Buyer for supply of the Goods and/or Services in accordance with these Conditions.
Deliverables:	the deliverables as set out in the Order Acknowledgement.
Delivery Location:	has the meaning set out in clause 4.1.
Force Majeure Event:	has the meaning given to it in clause 15.
Goods:	the goods set out in the Order Acknowledgement that the Company sells.
Goods Specification:	any specification for the Goods as set out in the Order Acknowledgement, or as otherwise agreed in writing by the parties.
Intellectual Property Rights:	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), chemical formulations, manufacturing and/or refining techniques, systems and processes, methodologies and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Order:	the Buyer's order for the Goods, as set out in the Buyer's purchase order form, or the Buyer's written response to the Company's quotation, as the case may be.
Order Acknowledgement:	the acknowledgement issued by the Company in response to an Order referencing these Terms and Conditions and setting out the Goods and/or Services to be supplied by the Company.
Returnable Container:	a container or packaging owned or licensed by the Company that is used to transport the Goods.
Services:	the services, including the Deliverables, supplied by the Company to the Buyer as set out in the Service Specification.
Service Specification:	the description or specification for the Services as listed on the Order Acknowledgement or as provided in writing by the Company to the Buyer.

1.2 In these Terms and Conditions, the following rules of construction apply:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.2 A reference to **writing** or **written** includes email.
- 1.2.3 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 **ORDERS AND BASIS OF CONTRACT**

- 2.1 A quotation for the Goods and/or Services given by the Company shall not constitute an offer and is subject at all times to the availability of stock from time to time.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions subject always to the current prices for the Goods which may apply from time to time. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate. These Conditions shall apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate (including those set out in the Buyer's Order document), or which are implied by trade, custom, practice or course of dealing.
- 2.3 The Buyer acknowledges that it has not relied on the Company's advice in selecting the Goods and/or Services and the Company holds no responsibility of the suitability or further application of the Goods and/or Services. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 The Order shall only be deemed to be accepted when the Company issues its Order Acknowledgement at which point the Contract shall come into existence. In the event that the Buyer:
- 2.4.1 indicates any special requirements as part of its Order; or
- 2.4.2 has purported to incorporate its own terms into the Order,
- the Company's Order Acknowledgement will not be an acceptance of those terms and instead will be deemed to be a counter-offer to the Buyer and that counter-offer will be deemed to have been accepted by the Buyer unless the Buyer notifies the Company within 24 hours of receipt of the Order Acknowledgement.
- 2.5 Following the Order Acknowledgement in accordance with clause 2.4, an Order cannot subsequently be amended or cancelled by the Buyer and the Buyer will not be able to claim a refund to any sums paid under the Contract in any circumstance.

3 **QUALITY**

- 3.1 The Goods are described in the Order Acknowledgement or as otherwise agreed in writing between the parties.
- 3.2 The Company shall use its reasonable endeavours to supply the Goods in conformation with all material aspects of the Goods Specification.
- 3.3 The Company reserves the right to amend the Goods Specification at any time if required by any applicable statutory or regulatory requirements or other commercial and/or operational reason, provided that the Goods do not materially function in any lesser way than the original Goods Specification.
- 3.4 Except as provided for in this clause 3, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the agreement. For the avoidance of doubt the Company does not make any warranty as to the Goods' fitness for purpose and it is the Buyer's sole responsibility to satisfy itself that the Goods are fit for purpose.
- 3.5 The Company warrants to the Buyer that any Services will be provided using reasonable care and skill.
- 3.6 To the extent that it is able, the Company shall use reasonable endeavours to pass on the benefit of any warranties provided by the original manufacturer or supplier of the Goods where applicable and provide reasonable assistance with any claim the Buyer may have in respect of the Goods.
- 3.7 The Company shall manufacture, pack and supply, or pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.

3.8 The Company shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the manufacture, packing, packaging, marking, storage, handling, and delivery of the Goods.

4 DELIVERY OF GOODS

4.1 The Company shall deliver the Goods to, or the Buyer shall collect the Goods from, the location set out in the Order Acknowledgement or such other location as the parties may agree (Delivery Location). Delivery shall be at any time after the Company notifies the Buyer that the Goods are ready. The Buyer shall collect the Goods within 3 Business Days of the Company notifying the Buyer that the Goods are ready or as otherwise agreed in writing between the parties.

4.2 Delivery of the Goods shall be completed, and risk in the Goods shall pass (if being delivered) on the Goods' arrival at the Delivery Location or (if being collected by the Buyer) on completion of loading of the Goods at the Delivery Location.

4.3 The Company is not responsible for any off-loading or unpacking of the Goods following delivery which shall be the sole responsibility of the Buyer.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event, the Buyer's failure to provide the Company with adequate delivery instructions, the Company exercising its right under clause 4.8.2, or any other instructions that are relevant to the supply of the Goods. Delays in delivery of any Goods shall not entitle the Buyer to refuse to take delivery of the Goods.

4.5 If the Buyer fails to take delivery of any Goods within 3 Business Days of the Company notifying the Buyer that the Goods are ready for collection (or as otherwise agreed in writing between the parties), then, except where that failure or delay is caused by the Company's failure to comply with its obligations under the Contract, or the Company exercises its right under clause 4.7.2:

4.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Company notified the Buyer that the Goods were ready for collection; and

4.5.2 the Company shall store the Goods until actual delivery takes place, and notwithstanding any invoice that may have been sent by the Company for the Goods, may charge the Buyer for all additional costs and expenses (including insurance) relating to the storage of the Goods arising out of the Buyer's failure to take delivery.

4.6 The Company may deliver the Goods by instalments, which may, at the Company's discretion, be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment. References in this agreement to Goods shall, where applicable, be read as references to instalments.

4.7 Where the Buyer is to collect the Goods:

4.7.1 The Buyer is responsible for the suitability of such collection arrangements including safety and security in line with best practice from time to time in the chemical industry;

4.7.2 The Company reserves the right to refuse to load the Goods onto any form of transport which in its opinion, acting reasonably, is not suitable for the type of Goods to be loaded; and

4.7.3 Where the Goods are subject to the Petroleum (Consolidation) Regulations 2014 and/or the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 or any other legislation relevant to the handling and/or transportation of dangerous goods (**Regulations**), the Company reserves the right to refuse to load the Goods onto any such vehicle which, in its opinion, does not conform to the Regulations or whose driver is not in possession of the required documents as described by the Regulations for the class or classes of Goods which are to be transported.

4.8 Where the Company is to deliver the Goods:

4.8.1 The Buyer is responsible for ensuring the Delivery Location is sufficiently safe and secure in line with best practice from time to time in the chemical industry; and

4.8.2 The Company retains the right to refuse to deliver to premises which the Company or its agents deem do not meet the requirements in clause 4.8.1.

5 INSPECTION AND ACCEPTANCE OF THE GOODS

5.1 For the purposes of this clause "Visual Inspection" means:

5.1.1 verifying the nature and quantity of the Goods delivered; and

- 5.1.2 checking carefully that the Goods are free from any obvious defect and/or damage that is apparent on normal visual inspection (including without limitation delivery of the incorrect quantity or incorrect Goods).
- 5.2 The Buyer shall on the date on which the Goods are delivered by the Company:
- 5.2.1 undertake a Visual Inspection of the Goods; and
- 5.2.2 confirm its acceptance of the Goods in writing by signing the accompanying delivery note.
- 5.3 Subject to clause 6, once the Buyer has confirmed acceptance of the Goods in accordance with clause 5.2, the Buyer shall not be permitted to reject the delivered Goods.
- 5.4 If following a Visual Inspection the Buyer, acting reasonably, rejects the Goods delivered, subject to clause 5.5, the Buyer must endorse the carrier's receipt note to this effect and notify the carrier and the Company's sales office of the reasons for the rejection in writing within 72 hours. Where the Buyer wishes to reject the Goods the Buyer must, after authorisation from the Company either procure that the carrier takes the Goods back to the Company's premises or return the Goods to the Company's premises itself. Once the Goods have been returned to the Company's premises, the Company shall inspect the Goods and shall, in its sole discretion, do the following:
- 5.4.1 at its option, repair, remedy or replace the defective Goods; or
- 5.4.2 provide a credit note for the price of the defective Goods in full or in part; or
- 5.4.3 return the Goods back to the Buyer at the Buyer's own cost if the Company concludes acting reasonably that the Goods are not defective or that the damage to the Goods has been caused by the Buyer or the Buyer's carrier.
- 5.5 If the Company delivers more or less than the quantity of Goods ordered the Buyer may not reject the Goods, but on receipt of notice from the Buyer that the wrong quantity of Goods was delivered, the Company shall work with the Buyer to remedy any such issues regarding quantity of Goods delivered, which may include a pro-rata adjustment to the relevant invoice on receipt of notice from the Buyer that the wrong quantity of Goods was delivered. The Buyer may not reject the Goods under clause 5.4 if any of the events listed in clause 6.2 apply.

6 DEFECTIVE GOODS AND RETURNS

- 6.1 The Buyer may reject any Goods delivered to it that do not comply with the warranties set out in clause 3 due to a defect which could not have reasonably been discovered by the Buyer (making careful and diligent enquiry) when conducting the Visual Inspection pursuant to clause 5.2.1, provided that:
- 6.1.1 notice of rejection is given to the Company in writing within a reasonable period of time of the defect having become apparent, and in any event, no later than 60 days after delivery to the Buyer;
- 6.1.2 sufficient details are provided along with the notice of rejection by the Buyer as to why the Buyer is rejecting the Goods; and
- 6.1.3 none of the events listed in clause 6.2 apply.
- 6.2 The Company shall not be liable for failure of the Goods' to comply with the warranties set out in clause 3 and the Buyer may not reject any Goods delivered to it as set out in clause 5.4 or clause 6.1 if any of the following events apply:
- 6.2.1 the Buyer makes any further use of those Goods after giving notice in accordance with clause 6.1.
- 6.2.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 6.2.3 the Buyer alters, repairs or changes the make-up of those Goods without the written consent of the Company;
- 6.2.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- 6.2.5 the defect relates to the expiry date of the Goods passing and the Company had made the Buyer aware of such date before delivery; or
- 6.2.6 notwithstanding clause 2.3, the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.3 If the Buyer rejects Goods under clause 6.1 then the Company shall liaise with the Buyer on the matter, and in its sole discretion (and its own cost), do the following:

6.3.1 at its option, repair, remedy or replace the defective Goods; and/or

6.3.2 provide a credit note for the defective Goods in full or in part.

After taking the remedial actions described above, the Company shall have no further liability to the Buyer for the rejected Goods' failure to comply with clause 3.

6.4 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Company.

7 LIEN

The Company retains a general lien on any of the Goods that have been supplied to the Buyer under these Conditions in respect of any unpaid debts due from the Buyer in respect of the same.

8 RETURNABLE CONTAINERS & PACKAGES

8.1 Returnable Containers shall remain the property of the Company or its licensors and the Company reserves the right to charge the Buyer for the use of the Returnable Containers. Where a charge for a Returnable Container is made at the time of invoice, the Returnable Container shall be returned to the Company, to the address stated on the invoice, within 3 months of the date of delivery. On return of the Returnable Containers to the Company, the Company shall issue a credit note to the Buyer within 7 days of return of the Returnable Container for the returned value of the Returnable Container. No credit note will be issued to the Buyer where the Returnable Container is returned to the Company in a damaged condition or 3 months or more after delivery.

8.2 Where no charge is made for the Returnable Container at the time of invoice, the Returnable Container shall be returned to the Company by the Buyer, to the address stated on the invoice, within 3 months of delivery of the Goods. If the Returnable Container is not returned by the Buyer within 3 months of delivery, the Company reserves the right to invoice the Buyer for the full cost of a replacement Returnable Container which shall be payable in accordance with clause 11.

8.3 The Buyer shall at its own expense, ensure each Returnable Container that it receives following delivery of Goods is returned to the Company empty, clean and in good condition.

9 TITLE

9.1 Title to the Goods shall not pass to the Buyer until the earlier of:

9.1.1 the Company receives payment in full (in cleared funds) for the Goods; and

9.1.2 the Buyer resells or uses the Goods, in which case title to the Goods shall pass to the Buyer at the time and under the conditions specified in clause 9.3.

9.2 Until title to the Goods has passed to the Buyer, the Buyer shall:

9.2.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;

9.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

9.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;

9.2.4 notify the Company immediately if it becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.5; and

9.2.5 give the Company such information relating to the Goods as the Company may require from time to time.

9.3 Subject to clause 9.4, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:

9.3.1 it does so as principal and not as the Company's agent;

9.3.2 title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs; and

9.3.3 the Buyer shall account to the Company for the proceeds of sale.

9.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 14.2.1 to clause 14.2.5, then, without limiting any other right or remedy the Company may have:

9.4.1 the Buyer's right to resell Goods or use them in the ordinary course of its business ceases immediately;

9.4.2 the Company may at any time:

9.4.2.1 require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

9.4.2.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

10 SUPPLY OF SERVICES

10.1 The Company shall provide the Services to the Buyer in accordance with the Service Specification in all material respects.

10.2 The Company shall use reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

10.3 The Buyer shall co-operate with the Company in all matters relating to the Services and will provide the Company with such information and materials as the Company may reasonably require to supply the Services, and will ensure that such information is accurate in all material respects.

10.4 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Buyer in any such event.

10.5 To the extent that the Services are to be performed in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's performance of the Services in accordance with the specification. This clause 10.5 shall survive termination of the Contract.

10.6 If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):

10.6.1 the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;

10.6.2 the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 10.6; and

10.6.3 the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

11 PRICES & PAYMENT

11.1 If no price for Goods is specified in the Order Acknowledgement, the price shall be as set out in the Company's price list in force as at the date of delivery.

11.2 If no price for Services is specified in the Order Acknowledgement, the price shall be as set out in the Company's price list in force as at the date of the start of performance of the Services.

11.3 The Company reserves the right to increase the price of the Goods in the following circumstances:

11.3.1 to reflect any changes to applicable metal surcharges as at the date of delivery. The Buyer acknowledges that metal surcharges fluctuate from time to time and accordingly the Company shall not be required to give the Buyer advance notice of such increase; or

- 11.3.2 for any other reason on giving written notice to the Buyer and at any time 7 days before delivery, to increase the price of the Goods. In respect of any undelivered Goods under an Order Acknowledgement, the Buyer may, within 7 days of receipt of the notice, cancel those Goods purchased under the Contract that are so far undelivered and receive a refund for any sums paid.
- 11.4 Unless otherwise stated in the Order Acknowledgement, the price of the Goods:
- 11.4.1 subject to clause 8, includes the costs and charges of packaging, insurance and transport of the Goods; and
- 11.4.2 excludes amounts in respect of value added tax (**VAT**), which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 11.5 In respect of Goods, the Company shall invoice the buyer on or at any time after delivery. In respect of Services, the Company shall invoice the Buyer on or at any time after delivery of the Services.
- 11.6 Unless otherwise stated on the Company's invoice or otherwise agreed in writing between the parties, the Buyer shall pay each invoice in full and in cleared funds within twenty (20) days following the end of the month in which the invoice was dated. Time of payment is of the essence.
- 11.7 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then:
- 11.7.1 the Buyer shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank UK plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount;
- 11.7.2 the Company shall be entitled to treat such failure as a material breach of the Contract in accordance with clause 14.2.1 and require the Buyer to make immediate payment of all monies due or to become due; and
- 11.7.3 the Company shall be entitled to suspend the delivery of further Goods and/or Services without liability to the Buyer, until such time as the arrears have been cleared to the reasonable satisfaction of the Company.
- 12 INTELLECTUAL PROPERTY RIGHTS**
- 12.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 12.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Buyer.
- 13 LIMITATION OF LIABILITY**
- 13.1 This clause 13 sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other for:
- 13.1.1 any breach of this agreement however arising;
- 13.1.2 any use made or resale of the Goods by the Buyer, or of any product incorporating any of the Goods; and
- 13.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 13.2 Nothing in this agreement shall limit or exclude the liability of either party for,
- 13.2.1 death or personal injury resulting from negligence;
- 13.2.2 fraud or fraudulent misrepresentation;
- 13.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982; or
- 13.2.4 breach of section 2 of the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.2:

- 13.3.1 the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 13.3.2 the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid by the Buyer under each Contract.
- 13.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.5 This clause 13 shall survive termination of the Contract.
- 14 TERMINATION**
- 14.1 Subject to the rest of this clause, and without affecting any other right or remedy available to it, the Company may terminate the Contract on giving not less than three months' written notice to the Buyer.
- 14.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 14.2.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 14.2.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 14.2.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 14.2.4 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 14.2.5 the Buyer fails to conform to these Conditions.
- 14.3 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company, and the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately, if the Buyer becomes subject to any of the events listed in clause 14.2.1 to clause 14.2.4, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 14.4 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 14.5 On termination of the Contract for any reason:
- 14.5.1 the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and in respect of Services performed or part performed but for which no invoice has yet been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
- 14.5.2 the Buyer shall return any Goods and/or Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and
- 14.5.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 14.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 15 FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from circumstances or causes beyond its reasonable control (**Force Majeure Event**). If the period of delay or non-performance continues for 2 months, the party not affected may terminate the Contract by giving 14 days written notice to the affected party.

16 CONFIDENTIALITY

16.1 Each party (the "**Receiving Party**") shall during and after the Contract not use for any other purpose than contemplated under these Conditions and not disclose to any person (other than on a need-to-know basis for the purposes of the Contract) any confidential information received from the other party (the "**Disclosing Party**") concerning technical, financial and business information, know-how, technologies, trade secrets, formulations, processes, and commercial methods and other activities ("**Confidential Information**") of the Disclosing Party, except to the extent required by (i) law; (ii) government authorities; or (iii) relating to the safety of the Goods.

16.2 It is understood that confidential information shall not include information which has been known by the Receiving Party before disclosure hereunder, is in the public domain, falls within the public domain without any fault of the Receiving Party, or which is received by the Receiving Party from other sources having the right to disclose the same.

17 NOTICE

17.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, or e-mail.

17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission in the absence of any delivery failure notification.

18 ASSIGNMENT

The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under any Contract without the prior written permission of the Company.

19 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

20 VARIATION

The Company reserves the right to vary these Conditions in its sole discretion on giving the Buyer reasonable notice.

21 SEVERANCE & WAIVER

21.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable whilst giving effect to the original commercial intentions of the parties. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

21.2 Waiver by the Company of any term or condition hereof shall not prevent the subsequent enforcement of that term or condition and shall not be deemed a waiver of any subsequent breach. In the event that a Court determines that any of the provisions of these terms should be set aside then the other provisions will continue to stand and be independently enforced.

22 THIRD PARTY RIGHTS

A person who is not a party to any contract which is subject to these Conditions has no rights to enforce any term of such contract.

GOVERNING LAW AND JURISDICTION

These Conditions and the construction, validity and performance of any Contract between the parties shall be construed and applied in accordance with the Laws of England and Wales. Any dispute arising out of or in connection with a Contract, 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 Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one, the legal place of arbitration shall be London, the language used in the arbitral proceedings shall be English and the governing law of the Contract shall be the substantive law of England and Wales.