

# TERMS AND CONDITIONS OF SALE -INDUSTRIAL FRAGRANCES LTD

## 1. INTERPRETATION

1.1 In these conditions the following words have the following meanings:

**Buyer:** the person(s), firm or company who purchases the Goods from the Company;

**Company:** Industrial Fragrances Ltd, a private company registered in England and Wales under company number 08316324 and whose registered office is at 34 Earle Drive, Parkgate, Neston, CH64 6RZ or any affiliated company stated in the Contract;

**Contract:** the Order provided by the Company and the Seller's acceptance of the Order;

**Contract Price:** the price for the Goods as detailed in the Contract, in line with the Company's price list as published on the date of delivery or deemed delivery;

**Delivery Point:** the place where delivery of the Goods is to take place under condition 4;

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them) which shall be any finished goods, raw goods or packaging material as described in the Contract.

**Order:** the Company's written instruction (purchase order form) to purchase the Goods, incorporating these Terms and Conditions, the Company's product specification and including any special conditions that have been endorsed by the Company and appended to the purchase order form;

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions the headings will not affect the construction of these Conditions.

1.5 In the event of any conflict between these Terms and Conditions and any special conditions, the special conditions shall prevail.

## 2. APPLICATION OF TERMS

2.1 These Terms and Conditions of Sale shall apply to all purchases of Goods by the Buyer from the Company and may be modified only with the prior written agreement of the Company.

2.2 Subject to any variation under condition 2.45 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document), without exception.

2.3 Any general or special terms and conditions of purchase proposed by Buyer shall not become binding on the Company unless expressly accepted in writing by the Company and included in the special conditions.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.5 These Conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by Scott Wilkinson or an authorised officer of the Company elected by Scott Wilkinson.

2.6 Each Order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.7 No Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.8 The Buyer must ensure that the terms of its Order and any applicable specification are complete and accurate.

2.9 Any quotation is given on the basis that no contract will come into existence until the Company despatches an acknowledgement of the Order to the Buyer. Any quotation given by the Company is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it for any reason whatsoever.

2.10 The Contract is made subject to the granting of all necessary export licenses to the Company and or their suppliers.

### **3. DESCRIPTION**

3.1 The description of the Goods shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

### **4. DELIVERY**

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.

4.2 The Buyer will take delivery of the Goods within 28 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time

4.4 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5 If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

(a) risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);

(b) the Goods will be deemed to have been delivered; and

(c) the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Buyer will provide at its expense, at the Delivery Point, adequate and appropriate equipment and manual labour for loading the Goods.

4.7 Unless otherwise expressly agreed in any special conditions, the Company shall have the option to deliver up to 10% more or less than the contractual quantity or weight of the Goods.

4.8 If the Goods are to be delivered by instalment, each instalment shall be considered a separate contract and subject to the Company's rights outlined in the rest of this clause 4, any failure in

respect of delivery, quantity, condition or specification of any one instalment shall not affect the Contract as to other instalments to be delivered.

4.9 Delivery under these Terms and Conditions of Sale shall also be subject to the provisions of clauses 13.1-13.5 inclusive.

## **5. NON-DELIVERY**

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

## **6. RISK/TITLE**

6.1 The Goods are at the risk of the Buyer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company within 7 days of a request of the same; and

(e) hold the proceeds of the insurance referred to in condition 6.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

6.5 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the

Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or (c) the Buyer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its agents and employees 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 has terminated, to recover them.

6.8 The Company gives no warranty that the Goods will be fit for any specific purpose or use.

6.9 The Goods are not warranted free from defect rendering the same unmerchantable, which would not be apparent on reasonable examination, any statute or rule of law to the contrary notwithstanding.

6.10 Any claims by the Buyer regarding specification, analysis, condition, quality, or otherwise in relation to the Goods shall be notified to the Company within 3 working days after discovery thereof (or in the case of perishable goods within 24 hours of discovery) and, in any event, within 10 days after receipt by the Buyer. Failing such notification, all claims against the Company in relation to the Goods of whatsoever kind and howsoever arising shall be waived and absolutely barred.

6.11 In the event of any such notification referred to at 6.10 above, the Company shall be entitled to arrange for the Goods to be inspected as soon as reasonably practicable. Any handling of, or interference or dealing with the Goods whatsoever or howsoever by the Buyer prior to such inspection shall automatically be deemed to be unconditional acceptance of the Goods.

6.12 In the event of it being proved and certified by an independent analyst appointed by the Company that the Goods were not in conformity with the requirements of the Contract, the Company's liability shall be limited, at the Company's option to:

(a) the delivery of replacement material (provided that the Buyer shall, where possible, have first redelivered the Goods to the Company) or;

(b) to the granting of an appropriate credit or allowance against the Contract Price;

and any other rights or claims of the Buyer and in particular but without limitation any right to claim indirect or consequential damages including loss of profit and any claims from Buyers sub-buyers (including any claim made for an indemnity made by Buyers hereto) are expressly excluded.

6.13 It is the Buyers' responsibility at and from the time of delivery to ensure that the Goods are in all respects properly marked and packaged, and the Company will not be liable in respect of improper marking, packaging, loading, stowage, or other preparation for transport.

6.14 Save where a contrary intention is expressed in any special conditions endorsed by the Company, weight condition and quality shall be final upon shipment/dispatch according to the certificate of the Company or their suppliers. The provision of such a certificate shall not relieve the Buyer from any consequences of their failure, where a reasonable opportunity has been afforded them, to check the goods and ensure their suitability for the purpose for which they are intended and/or whether the Goods are satisfactory.

6.15 The Buyer shall arrange with a reputable firm of insurers all such insurance's as would be usual and prudent to cover any liabilities that may arise under or in connections with the Goods. The limit of the indemnity should be at least £5,000,000 or such amount as specified by the Seller and should include pure financial loss. If requested, the Buyer shall provide the Company with evidence of any such insurance with 7 days of any request.

6.16 The Buyer is licensed by the Company in his capacity as fiduciary to resell the Goods by way of bona fide sale at full market value before the Company has received payment in full in respect thereof subject to the expression conditions that;

(a) the price of the Goods shall become immediately payable to the Company upon resale by the Buyer notwithstanding any period of credit agreed in this Contract; and

(b) the entire proceeds are held in trust for the Company and shall not be mixed with any other funds or paid into an overdrawn account but are paid into a separate bank account and shall be at all times identifiable as the Company's monies and it is agreed that if the Buyer shall be in breach of this provision, the Company shall be entitled to trace the proceeds of sale into the Buyers' Bank account or otherwise.

6.17 Without prejudice to the generality of clauses 6.18 and 6.19, the Buyers' right to possession of the Goods and to resell the Goods shall cease if payment in respect thereof is overdue or if the Buyer becomes insolvent or, being an individual, commits any act of bankruptcy or, being a company, pass a resolution for winding up, suffer the appointment of a receiver or administrator or make any arrangement with or compound with its creditors.

6.18 If the Goods are admixed with goods the property of the Buyer or are processed with or incorporated therein such that it is not possible to extract or remove the Goods from the resulting product of such admixture, process or incorporation, the said resulting product shall become and/or shall be deemed to be the sole and exclusive property of the Company. If the Goods are admixed with goods the property of any person other than the Buyer the said resulting product shall become or be deemed to be owned in common with that other person.

6.19 If the Company repossesses the Goods under this Clause 7 including any admixed goods as referred to in Clause 6.18 and resell the same, it shall account to the Buyer or any relevant third party for any proceeds of sale in excess of the aggregate of the amounts owned by the Buyer to the Company under the Contract or any other contract or otherwise which aggregate shall include the costs incurred in repossessing and reselling the Goods including legal costs, incurred in connection therewith.

## **7. PRICE**

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the Contract Price.

7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

7.3 If any new Export, Customs and/Excise duty or levy shall be imposed on any of the Goods, or if the rate of any existing duty or levy on any of the goods shall be increased and should such duty or levy be payable under this contract by the Company, or if by reason of import embargo or restriction or curtailment of governmental or EEC subsidies, the Company is obliged to pay an increased price for the supply of goods after taking into account, such embargo restriction or curtailment, the Company shall be entitled to increase the Contract Price by such amount as necessary to compensate them for such imposition or increase.

7.4 The Contract Price is based on freight rates and any surcharges ruling at the date of the Contract. Any new charges payable at the time of importation or any increase in an existing surcharge shall be for the Buyers' account.

7.5 Any war piracy and/or strike risk premium in excess of 0.5% on the transport of the Goods from the country of origin to the place of delivery shall be for the Buyers' account. The rate of such increase shall not exceed the rate ruling in London at time of shipment or date of vessel's sailing, whichever may be adopted by underwriters.

7.6 The Buyer shall effect payment strictly in accordance with the payment terms set forth in the Contract and shall not be entitled in any way to withhold, retain or exercise any right of set-off whatsoever or howsoever in respect of the Contract Price or any part thereof.

7.7 In the event of failure by the Buyer to pay any sum due on the due date for payment thereof, Buyer shall become liable to pay the Company, in addition to such unpaid sum, interest thereon from the due date of payment until the actual date of payment, calculated on a day by day basis as well after before judgement, at a rate equivalent to four per cent per annum above National

Westminster Bank PLC's Base Lending Rate from time to time in force for the currency of the contract.

7.8 If the Buyer shall fail to make payment on the due date of any amount due from them to the Company whether such amount be due pursuant to this Contract or in respect of any other dealing between the Company and the Buyer, or if the Buyer, being constituted in England and Wales, shall become insolvent or commit any act of bankruptcy or have an administrative receiver appointed over all or any of their assets or suffer an administration order to be made against them or take or suffer any action preparatory to winding up including, but without limitation the presentation of a winding up petition, the passing of a resolution for voluntary winding-up or the convening of meeting of creditors or if the Buyer, being constituted in any other country, take or suffer any corresponding action in any such other country, the Company may at their option exercise any or all of the following remedies without prejudice to any other remedies they may have;

(a) require payment in cash to discharge any existing liability and to cover, before delivery, all further material to be delivered under the Contract; and/or

(b) terminate the Contract in which event the Company will be entitled to sell the Goods to any third party and to claim from the Buyer the difference between the price realised and the Contract Price and the Company may by their representatives enter upon Buyer premises for any purposes in connection with such sale and in particular but without limitation, to retake possession of all or any the Goods; and/or

(c) apply any sum owing by the Company to Buyer in or towards satisfaction of all or any of Buyers' obligations to the Company whether actual or contingent.

7.9 In default of fulfilment of this contract by the Buyer, the Company at their discretion shall have the right either to cancel the contract or to sell against the Buyer who shall on demand make good the loss, if any of such sale.

## **8. PAYMENT**

8.1 Payment of the price for the Goods is due within 30 days of the date of delivery.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds.

8.4 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **9. QUALITY**

9.1 Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods will:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

(b) be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 unless:

(a) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.

9.4 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company.

9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

9.7 Any Goods replaced will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.

## **10. LIMITATION OF LIABILITY**

10.1 Subject to condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions; and

(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

10.4 Subject to conditions 10.2 and 10.3:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract Price; and

(b) the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 The Company shall in no way be liable for;

(c) labour costs or other expenditure in and about the processing of the Goods or any consequential loss or damage whatsoever including but without prejudice to the generality of the foregoing any

claims which shall be made against the Buyer by any third party to whom the Goods shall be resold by the Buyer or by whom the Goods may otherwise be handled, processed or used; or  
(d) any alleged loss of profit of the Buyer or any other losses whatsoever.

## **11. ASSIGNMENT**

11.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

11.2 The Company may assign the Contract or any part of it to any person, firm or company.

## **12. FORCE MAJEURE**

12.1 Delivery under these Terms and Conditions of Sale shall also be subject to, and the Company shall be in no way liable for, any loss or damage of any kind caused by or resulting from inability to deliver or delay in delivery arising from any circumstances beyond their reasonable control including in particular, but without limitation: war whether declared or not; warlike hostilities or armed conflict whether internal or international; insurrection; riot; terrorism; civil commotion; rebellion; crop failure; flood; storm; tidal wave; earthquake; fire; ice; lightning; or any natural phenomenon or Act of God; explosion; strike; lockout; labour dispute; embargo; blockade; breakdown or prevention of machinery; unavailability, loss, delay, detention or interruption of a carrying vessel or any similar means of transportation; delay or mishap in, loading or discharging material; requirements or regulations any governmental or quasi governmental or other public or statutory authority or any state, city, municipal or local authority; prohibition of export or import; non availability of export or import licence; cancellation or suspension or other non performance, except if caused by Company's unjustifiable act or omission of any contract on which the Company depends for fulfilment of this contract; accident or any other similar or dissimilar circumstance including any circumstance affecting, or affecting the availability of, any raw material required for the production of the Goods whatsoever, wheresoever, howsoever preventing or hindering delivery of the Goods.

12.2 In the event of the Company's inability to effect delivery by reason of any of the above mentioned circumstances, the Company shall be at liberty by notice in writing to the Buyer to postpone delivery, or at the Company's sole option, to terminate the this Contract in whole or as to any unfulfilled part thereof, in which event the Company's liability shall absolutely cease and determine. Any delivery thus postponed shall, if the Company so require, be accepted by the Buyer at the same rate of delivery and upon the same Terms and Conditions as are specified in this contract, such resumption of delivery to commence within a reasonable timeframe after the service of notice in writing by the Company to the Buyer.

12.3 If by reason of any of the above-mentioned circumstances, the Company does not have or are unable to obtain sufficient available supplies of the Goods to enable them to fulfil all their contracts, the Company may allocate their available supplies against any or all purchasers on such basis as the Company deems fair and practical, without any liability for failure to comply with the provisions of this Contract.

12.4 Any duly authenticated certificate provided by the Company to the Buyer which is issued by any recognised Chamber of Commerce, trade association, government or other body with knowledge of the relevant facts in any country in which the above mentioned circumstances occurred shall be accepted by the Buyer as conclusive proof of the occurrence and duration of such circumstances.

12.5 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, those circumstances outlined at



clause 12.1 above. Provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

### **13. GENERAL**

13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

13.2 The Company may, upon the request and on behalf of Buyer and at the expense of the Buyer, make packaging, shipping, transport, discharging, unloading, storing, insurance, and/or other arrangements in respect of all or any of the Goods, provided always that any such arrangements are made at the entire risk and responsibility of Buyer, without any liability on the part of the Company, and without prejudice to the Company's rights under the Contract.

13.3 Notwithstanding any provision of law or regulation to the contrary it shall be the responsibility of the Buyer to dispose of all packaging materials of all descriptions in accordance with the provisions of all laws and regulations of the place at which the goods are delivered to the Buyer and the Buyer shall hold harmless and indemnify the Company against any liability which may arise from their failure or refusal to effect such disposal.

13.4 Whether or not the Buyer shall confirm in writing their acceptance of the Company's terms and conditions and any special conditions, the Buyers' conduct in performance, part performance, or purported performance of this contract shall constitute their unconditional acceptance of the Company's terms and conditions and any special conditions for this and future business.

### **14. WAIVER**

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

14.3 No waiver or indulgence by the Company shall prejudice them in the full exercise of their rights and remedies under the Contract.

14.4 No failure or delay by the Company in exercising any right or privilege shall operate as a waiver nor shall single or partial exercise by the Company preclude any subsequent exercise in law or equity or otherwise.

### **15. SEVERANCE**

15.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original intention.

## **16. ENTIRE AGREEMENT**

16.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

16.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty, whether made negligently or innocently, (other than for breach of contract).

16.3 No representations made by or on behalf of the Company in relation to the Goods shall form part of this agreement unless expressly stated herein.

## **17. CONFIDENTIALITY**

17.1 All confidential information of whatsoever nature supplied by the Company to the Buyer or prepared by the Buyer in connection with the Buyer's performance of the Order shall be used by the Company only for the performance of the Order and may be disclosed to a third party only with the Company's prior written agreement and only after obtaining a written confidentiality undertaking from the intended receiving third party. In addition the Buyer and the Company agree to keep the existence, the nature, and the terms of the Order confidential during their relationship and thereafter.

17.2 The Buyer shall not issue any form of media release or communication announcing this agreement or otherwise communicate with the media in any way concerning this agreement or any aspect of it unless otherwise they have the prior written agreement of the Company.

## **18. INTELLECTUAL PROPERTY RIGHTS**

The Order shall not include the transfer of any and all intellectual property rights to the Goods (which shall mean all intangible property rights such as confidential and proprietary formulas, technical know-how, processing technology, trade secrets, and other confidential data and information of a non-technical nature, as well as copyrights and rights in the nature of copyright, database rights, design rights, model rights, patents, trademarks and domain names, whether registered or not, and any pending applications) of to the Buyer save that the Company shall grant a limited license for the sole purpose of enabling the Buyer to use the Goods as intended pursuant to the Order.

## **19. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties. No party shall have authority to act as agent for, or to bind, the other party in any way.

## **20. DISPUTE RESOLUTION**

20.1 In the event of any dispute in the first instance the Company and the Buyer shall in good faith attempt to mutually resolve the dispute.

20.2 In the event no resolution can be reached within five working days from the date of first notice of the dispute either party shall have the right to invoke legal proceedings in accordance with this clause without further recourse to the other.

## **21. RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## **22. NOTICES**

22.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Contract, or as otherwise specified by the relevant party by notice in writing to the other party.

22.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Contract, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

22.3 The Company may serve and date notice in an electronic form such as email subject to providing written confirmation as detailed in this clause. Any notice given by the Buyer must not be in an electronic form, and will not be considered valid.

## **23. GOVERNING LAW AND JURISDICTION**

23.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.

23.3 Both parties waive any objections on the grounds of venue or forum non conveniens or any similar ground.

23.4 Translation of the agreement into any language other than English shall only be for the convenience of the parties, and in all cases interpretation of this agreement shall be controlled by the English text.