

VALTRIS CHAMPLOR SAS – Terms and Conditions of Purchase for Road Transportation

1 DEFINITIONS

1.1 In these Conditions the following words and expressions shall have the following meanings:

"Affiliate" means any person that directly or indirectly controls, or is controlled by, or is under common control with, the Buyer at any time; and for this purpose control over any person shall mean the power to direct the management or policies of that person;

"Business Day" means any day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business;

"Buyer" means VALTRIS CHAMPLOR SAS (RCS Bar le Duc 495 015 281) whose registered office is at ZI Baleyecourt, FR55100, Verdun, France;

"Consignee" means the person to whom the Consignment is to be delivered;

"Consignment" means goods in bulk or contained in one parcel, package, cylinder, drum, isotank or container, as the case may be, or any number of separate parcels, packages, cylinders, drums, isotanks or containers sent at one time in one load by or for the Buyer;

"Conditions" means these terms and conditions of purchase for Goods and/or Services;

"Purchase Contract" means a legally binding Purchase Contract between the Supplier and the Buyer for the sale and purchase of Goods and/or Services ordered under the Purchase Contract and accepted by the Supplier in accordance with these Conditions;

"Convention" means the United Nations Convention on the Purchase Contract for International Carriage of Goods by Road (Geneva, 19 May 1956)

"Currency" means the currency specified in the Purchase Contract;

"Dangerous Substances" means those liquid or solid substances (and articles containing such substances) the carriage by road of which is prohibited by, or authorised only on certain conditions by Annexes A and B of the European Agreement Concerning the International Carriage of Dangerous Goods by Road;

"Delivery Address" means the delivery address stipulated in the Purchase Contract or such other address agreed in writing between the Parties;

"Delivery Date" means the delivery date as set out in the Purchase Contract or as otherwise agreed between the Parties;

"Document" includes without limitation, any document in writing, any drawing, map, plan, diagram, picture or other image, tape disk or other device or record embodying information in any form;

"Force Majeure Event" means fire, explosion, earthquake or other natural physical disaster, war, riot, terrorist action or civil commotion;

"Goods" means the goods to be delivered by the Supplier as either set out in the Purchase Contract or as specified in any Schedules to these Conditions and includes, without limitation, any Service Deliverables;

"In-put Materials" means all Documents, information and materials provided by the Buyer or its Affiliates relating to the Goods and/or the Services including without limitation computer programs, data, reports and specification and any in-put materials specified in any Schedules to these Conditions;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for an renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world;

"Mis-delivery" means failure to deliver a Consignment (in whole or part) or delivery of a Consignment (in whole or part) to an address other than that specified by the Buyer or delivery without obtaining written proof of delivery (unless authorised to do so by the Buyer) or the delivery of a Consignment (in whole or part) to a person other than the Consignee without authority of the Buyer;

"Operational Services Schedule" means the operational services schedule and associated documentation and materials issued by the Buyer to the Supplier from time to time;

"Party" and "Parties" means the Supplier or the Buyer or both the Supplier and the Buyer (as is applicable);

"Price" means the price of the Goods and/or Services as set out in the Purchase Contract;

"Purchase Contract" means the Buyer and Supplier's written and signed document or delivery notification document;

"Quantity Required" means the quantity of Goods to be delivered and/or Services to be performed by the Supplier to the Buyer as set out in a Purchase Contract or otherwise agreed in writing between the Parties;

"Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time);

"Supplier" or "Supplier" means the Supplier of the Goods and/or supplier of Services;

"Services" means the services to be performed by the Supplier as either set out in the Purchase Contract or road transportation delivery services of Consignments to Consignees.

"Service Deliverables" means all Documents, products and materials delivered by the Supplier or its agents, sub-contractors or employees in relation to the Services in any form, including without limitation any service deliverables specified in any Schedules to these Conditions;

"SHE Standards and Requirements and Site Rules" means the Buyer's written policies and rules regarding health and safety and other requirements of visitors to the Buyer's premises as notified to the Supplier from time to time;

"Specification" means the specification of the Goods and/or Services as set out in the Purchase Contract;

"Transit" shall commence when the Supplier takes possession of the Consignment and unless otherwise previously agreed, shall end either when the Consignment is delivered to the Consignee during normal

- business hours or when the Consignment is delivered elsewhere or returned to the Buyer in accordance with instructions given pursuant to Clauses 4.18 and 4.19.
- 1.2 Any reference in these Conditions to:-
- (a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
 - (b) a Clause or Schedule is to a clause in these Conditions or a schedule to these Conditions; and
 - (c) a person includes an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture (whether or not having a separate legal personality).
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
- 1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.
- 1.5 In the event of any inconsistency or conflict between the terms of these Conditions, the Purchase Contract and the Schedules the following order of precedence shall apply:
- (i) the Purchase Contract;
 - (ii) these Conditions.

2 BASIS OF PURCHASE

- 2.1 The Purchase Contract constitutes a binding agreement for the Supplier to provide the Goods and/or Services and for the Buyer to purchase the Goods and/or Services subject to these Conditions.
- 2.2 The Purchase Contract shall be deemed to be accepted on the occurrence of the earlier of:
- (a) the signing and dating of the Purchase Contract by the Supplier and the Buyer;
 - (b) notification by the Supplier that the Goods are ready for delivery and/or Services are ready to be performed; or
 - (c) delivery of the Goods (or any part of the Goods) and/or performance of the Services (or any part of the Services);
- 2.3 These Conditions shall apply to the Purchase Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a quotation or invoice for the Goods and/or Services has been given to the Buyer.
- 2.4 The Buyer shall have the option to request to the Supplier the inclusion of additional lanes and locations to the list as stipulated in the Purchase Contract.
- 2.5 Subject to clause 2.4 no variation to the Purchase Contract or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Parties.
- 2.6 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in the Purchase Contract, the Buyer shall contact the Supplier and such document shall be subject to correction without any liability on the part of the Buyer.

3 Specifications, Quality, Warranties and Representations

- 3.1 The Supplier shall at all times provide the Goods and/or Services in accordance with, and shall comply with the terms of these Conditions. The Buyer shall at all times comply with the terms of these Conditions.
- 3.2 The Buyer is relying on the skill and judgment of the Supplier in relation to the Goods and/or Services and without prejudice to any other terms set out in these Conditions, including but not limited to any terms implied by statute in favour of a purchaser, the Supplier represents, warrants and undertakes to the Buyer that the Goods and/or Services shall:-
- (a) comply with the Specification;
 - (b) be of satisfactory quality and fit for the purpose expressly or impliedly made known to the Supplier;
 - (c) be free from defects in design, materials and workmanship and should conform and comply in every way with the Purchase Contract, and any specifications, samples and any other descriptions or instructions issued by the Buyer (including without limitation the Specification);
 - (d) be made from first-class materials and by properly qualified skilled and experienced persons;
 - (e) be designed and manufactured so as to be safe and without risk to health or property when properly used;
 - (f) include all necessary information about the use of the Goods and/or Services and all instructions and warnings relating to the Goods and/or Services as may be necessary for the safe use of the Goods and/or Services and for the Buyer to comply with its obligations under all application health and safety legislation and regulations;
 - (g) comply with all relevant laws, regulations, orders, rules and codes of practice from time to time in force and obtain and maintain all necessary licences, authorisations and consents required to provide the Goods and/or Services;
 - (h) be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the transport carrier, and also be properly loaded, secured, stowed and carried so as to reach their destination in a safe, uncontaminated and undamaged condition;
 - (i) not infringe any Intellectual Property Rights of any third party.
- 3.3 The Supplier also represents, warrants and undertakes that:
- (a) it shall comply with all applicable regulations and other legal requirements concerning the manufacture, packaging and delivery of the Goods, the performance of the Services and the creation of the Service Deliverables;
 - (b) it has full title to the Goods and that the Goods shall be transferred to the Buyer with full title guarantee, free of all charges, licences, liens, mortgages and encumbrances; and
 - (c) the Services shall be performed with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services.
- 3.4 Without prejudice to any other express or implied right or remedy which the Buyer may have, if any of the Goods and/or Services are not supplied strictly in accordance with the Purchase Contract (including without limitation the Specification), the Buyer shall be entitled to avail itself of any one or more of the following remedies:

- (a) to cancel the Purchase Contract (in whole or in part);
 - (b) to reject the Goods and/or Services (in whole or in part) and return the Goods to the Supplier at the risk and cost of the Supplier on the basis that if the Price has already been paid by the Buyer, a full refund of the Price of any Goods and/or Services so rejected shall be paid immediately by the Supplier;
 - (c) to refuse to accept any further deliveries of the Goods and performance of the Services but without liability to the Supplier;
 - (d) to require the Supplier to carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Purchase Contract;
 - (e) to carry out itself at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Purchase Contract;
 - (f) to require the Supplier to supply replacement Goods or re-perform the Services without delay in accordance with the Purchase Contract.
- 3.5 The Buyer and/or the Buyer's employees, agents and representatives shall be permitted to inspect and test the Good at any time prior to delivery (including without limitation during manufacture, processing, storage, loading and unloading, whether at the premises of the Supplier or any third party) and the Supplier shall provide the Buyer with all facilities reasonably required for such inspection and testing. The Buyer shall have the right at any time during business hours to inspect any operation carried out by the Supplier pursuant to the Purchase Contract and the Supplier shall provide or procure all reasonable access and assistance to the representatives of the Buyer to enable such representatives.
- 3.6 Without prejudice to its other rights and remedies the Buyer may have whether in law or otherwise, if as a result of inspection or testing pursuant to clause 3.5 the Buyer is not satisfied that the Goods will comply in all respects with the Purchase Contract, the Buyer shall be entitled to any one or more of the remedies described within clause 3.4.
- 3.7 The Buyer warrants that it is either the owner of the Goods comprising each Consignment or is authorised by the owner of the Goods to procure the Services of the Supplier in relation to the Consignment.
- 3.8 The Supplier is not a common carrier.
- 3.9 The Supplier may not sub-contract the carriage without the written consent of the Buyer, which shall not be reasonably withheld. Notwithstanding consent having been given, the Supplier shall remain liable to the Buyer for all acts and omissions of any sub-contractor.
- 4 DELIVERY OF GOODS AND PERFORMANCE OF SERVICES
- 4.1 Save as otherwise provided in a Schedule, the Supplier shall use best endeavours to deliver the Goods to the Buyer and/or perform the Services in accordance with the Delivery Date.
- 4.2 Delivery of Goods shall be deemed to be made on the earliest occurrence of:
- (a) delivery of the Goods by the Supplier or by a third party carrier engaged by the Supplier to the Buyer at the Delivery Address; or
 - (b) collection of the Goods by the Buyer or a third party carrier engaged by the Buyer from the Supplier.
- 4.3 The Supplier shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or receive the Services.
- 4.4 Each Consignment shall be transported and delivered to the relevant Consignee subject to the agreed lead-time in the Purchasing Purchase Contract or otherwise agreed between the parties.
- 4.5 The condition and specification of the Goods comprising each Consignment upon delivery by the Supplier to the Consignee shall be identical to the condition and specification of the Goods comprising the Consignment immediately prior to Transit. Any tamper-proof seals placed on a Consignment by the Buyer or on the Buyer's behalf shall remain intact during Transit.
- 4.6 The Supplier shall throughout the duration of the Purchase Contract:
- (a) employ competent and appropriately qualified employees to provide the Services, provide adequate supervision and supply to its employees full and proper instructions and training as to the proper handling of each Consignment and as to the operation of any equipment necessary to perform the Supplier's obligations under the Purchase Contract;
 - (b) provide and maintain in good working order vehicles of sufficient capacity and duly taxed and insured and otherwise suitably equipped and manned to transport the Consignments;
 - (c) provide and maintain vehicles and ancillary equipment:
 - (i) of adequate strength and of good construction from sound and suitable materials; and
 - (ii) suitable for the purpose for which they are to be used;
 - (d) observe any reasonable instructions given to it by the Buyer in connection with providing the Services.
- 4.7 Whenever the Supplier shall be present on the Buyer's premises, the Supplier shall duly observe the provisions of the SHE Standards and Requirements and Site Rules.
- 4.8 The Supplier agrees to collect, take care and deliver by road transportation each Consignment to the Consignee in accordance with the terms of the Purchase Contract.
- 4.9 The Supplier shall sign a document acknowledging the receipt of the Consignment and obtain and return to the Buyer written proof of delivery to the Consignee. The Supplier shall keep the proof of delivery document and it shall be made available at the request of the Buyer.
- 4.10 The Supplier shall at all times comply with the terms and obligations of the Purchase Contract, the Operational Services Schedule and all applicable laws, legal requirements, rules, regulations and enactments that relate to the provision of the Services.
- 4.11 Except as otherwise agreed, the Supplier shall arrange for the provision of such plant (including special appliances), power or labour as is necessary for loading or unloading Goods to or from the transportation vehicle.
- 4.12 The Supplier shall not be required to provide service beyond the place of delivery specified by the Buyer. If any such additional service is given by the Supplier any loss or damage to the Consignment shall be at the sole risk of the Buyer provided that such additional service had been provided in accordance with the Buyer's instructions.
- 4.13 Risk for damage and loss to the Goods comprising each Consignment shall pass between the Parties subject to clause 6.2

- 4.14 Any isotanks or other containers made available by the Buyer for use by the Supplier in the provision of the Services shall be used exclusively for transportation and storage of the Goods comprising the Consignment unless otherwise agreed by the Buyer.
- 4.15 The Supplier shall ensure that any isotanks or containers provided by or on behalf of the Buyer (including without limitation at all times throughout Transit). The Supplier shall arrange and maintain for suitable insurance against all risks of loss or damage to any such isotanks or containers.
- 4.16 If the Consignment or the vehicle carrying the Consignment is involved in any incident or other occurrence resulting in injury, loss or damage to persons, property or Goods in the Consignment, the Supplier shall give notification of such incident or occurrence to the Buyer as soon as practicable by telephone and shall subsequently confirm the details in writing. The Supplier shall comply with any applicable legal requirements from time to time in force in respect of the notification of accidents.
- 4.17 In the event of a transport emergency any advice and assistance which may be given by the Buyer will be given in good faith but without liability for any loss or damage whatsoever and howsoever arising as a consequence of such advice or assistance.
- 4.18 If for any reason a Consignment cannot be collected or delivered, the Supplier shall contact the Buyer by telephone as soon as practicable to obtain instructions.
- 4.19 When a Consignment is held by the Supplier "to await order" or "to be kept until called for" or upon any like instructions and such instructions are not given or the Consignment is not called for and removed within 14 days, the Supplier shall contact the Buyer for instructions.

5 Prices and payment

- 5.1 The Price is:
- (a) exclusive of all applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and
 - (b) inclusive of all charges for shipping, carriage, insurance and delivery of the Goods and/or Services and any duties, imposts or levies other than value added tax;
- unless otherwise agreed in writing between the Parties;
- 5.2 Unless otherwise agreed in writing between the Parties, the Supplier shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or completion of the Services but not before delivery of the Goods and/or completion of the Services, and each invoice shall quote the number of the Purchase Contract and any applicable value added tax.
- 5.3 Unless otherwise agreed in writing between the Parties, the Buyer shall pay the Price in the Currency as detailed in the Purchase Contract and by the payment date as detailed in the Purchase Contract.
- 5.4 Payment shall be effected as agreed in writing between the Parties.
- 5.5 The Buyer shall be entitled to withhold payment if the Goods and/or Services do not comply with the Specification or otherwise fail to conform to this Purchase Contract subject to notifying the Supplier without undue delay of any non-conformity upon the Buyer's knowledge.
- 5.6 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Buyer.

6 Risk and property

- 6.1 Until delivery of the Goods to the Buyer in accordance with clause 4.2, the Goods shall be at the risk of the Supplier.
- 6.2 The title in the Goods shall pass to the Buyer upon delivery in accordance with clause 4.2, unless payment for the Goods is made prior to delivery, in which event title shall pass to the Buyer once payment has been made. In the event that payment is made prior to delivery of the Goods, the Supplier must appropriate the Goods to this Purchase Contract immediately upon payment.
- 6.3 The products shall be at the Supplier's risk when the relevant product leaves VALTRIS' flange.

7 FORCE MAJEURE

- 7.1 Neither Party shall be liable to the other or be deemed to be in breach of the Purchase Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Purchase Contract or these Conditions if the delay or failure is due to a Force Majeure Event.
- 7.2 If the Supplier is or anticipates that it will be prevented or hindered from delivering the Goods or performing and/or completing the Services by the Delivery Date due to a Force Majeure Event, then the Supplier shall notify the Buyer immediately and the Buyer shall be entitled to cancel or suspend the Purchase Contract without liability if it reasonably believes that delivery of the Goods and/or performance of the Services shall not be completed within 7 days of the due Delivery Date with immediate effect by giving notice in writing to the Supplier.
- 7.3 In the event of suspension pursuant to Clause 7.2, the Buyer shall be relieved of its obligations for the period of such suspension including but not limited to the payment of any part of the Price due during the period of suspension.
- 7.4 In the event of cancellation or suspension of the Purchase Contract pursuant to Clause 7.2, the Supplier shall repay to the Buyer that part of the Price paid (if any) in respect of any period or periods affected by such cancellation or suspension apportioned on a basis which shall be fairly and reasonably attributable to such cancellation or suspension.

8 Default and termination of the Purchase Contract

- 8.1 Either Party shall be entitled to terminate the Purchase Contract immediately upon the occurrence of any of the following:
- (a) the other Party being in material breach of any term of these Conditions or the Purchase Contract and such breach not being capable of remedy;
 - (b) the other Party being in material breach of any term of these Conditions or the Purchase Contract and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;

- (c) the other Party (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the other Party enters into any informal or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with or for the benefit of the general body of creditors of the individual, the partnership or the body corporate, or the other Party ceases or threatens to cease, to carry on business; or
 - (d) the other Party suffering the equivalent or any similar or analogous event in (c) (above) in any jurisdiction.
- 8.2 Without prejudice to any of its other rights or remedies, the Buyer shall have the right to terminate the Purchase Contract without any liability to the Supplier if the Supplier fails to deliver the Goods or complete performance of the Services within 7 days of the Delivery Date or if the Goods and/or the Services do not comply with the Purchase Contract and/or the defined KPIs defined in the Purchase Contract.
- 9 Confidentiality and the buyer's property
- 9.1 Each Party hereby undertakes not at any time to divulge any of the terms of the Purchase Contract or use any information in relation to the other Party's business or any other information received from the other Party in relation to the Purchase Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Buyer can divulge such information to any party to whom it assigns or transfers all or part of this Purchase Contract.
- 9.2 All In-put Materials and all other materials, equipment and tools, drawings, specifications and data supplied by or on behalf of the Buyer to the Supplier shall, at all times, be and remain the exclusive property of the Buyer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Buyer. They shall not be disposed of or used other than in accordance with the Buyer's written instructions and authorisation and shall be returned to the Buyer immediately upon termination of the Purchase Contract.
- 9.3 The Supplier shall not without the prior consent of the Buyer in writing permit photographs to be taken of any Goods or Consignment subject to the Purchase Contract, or vehicles bearing the Buyer's identification, not mention the Buyer's name in connection with the Purchase Contract in any publicity material or other similar communications to third parties.
- 10 INDEMNITIES
- 10.1 Without prejudice to any of the Buyer's rights under any condition, warranty or other term expressed or implied in these Conditions or by statute or by common law, the Supplier shall be liable to the Buyer for and shall indemnify and keep the Buyer indemnified against any and all liabilities, claims, actions, demands, expenses, costs (including but not limited to legal costs and other professional costs), proceedings, losses (including but not limited to loss of profit) or damage:
 - (a) caused by a breach of any warranty given by the Supplier to the Buyer in connection with the Goods and/or Services;
 - (b) caused by any delays, defaults, non-deliveries (including but not limited to non-delivery of the Quantity Required) or non-performance (in whole or in part) arising other than as a result of negligence on the part of the Buyer; and
 - (c) incurred by the Buyer in connection with any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the Goods and/or the Services.
- 10.2 Where the Supplier is performing Services pursuant to the Purchase Contract, neither Party intends that the rights and obligations conferred by the Purchase Contract or its termination or expiry will constitute a "relevant transfer" (as defined in the Regulation). If, notwithstanding such intention, the Regulation applies to transfer the employment of any person employed or engaged by the Supplier (or its agents or sub- contractors) to the Buyer or any replacement provider of services identical or substantially similar to the Services ("Replacement Provider") then in the event that the Buyer or the Replacement Provider serves a notice terminating the employment of such person within six months of the date of such transfer, the Supplier shall indemnify the Buyer and the Replacement Provider and keep those two parties indemnified at all times against any and all liabilities, claims, actions, demands, expenses, costs (including but not limited to legal costs and other professional costs), proceedings, losses (including but not limited to loss of profit) or damage suffered or incurred by the Buyer and the Replacement Provider which arise from any claim or claims by any such employees or by any employee representatives in relation to the transfer or termination of any such Purchase Contract of employment or collective agreements (including, without limitation any claim for breach of Purchase Contract or wrongful dismissal, unfair dismissal, failure to inform and consult under the Regulations or the Trade Union and Labour Relations Consolidation Act and any entitlement to a redundancy payment).

- 11 **Guarantee**
The Supplier consents to the Buyer transferring any guarantee or similar rights given by the Supplier to the Buyer in relation to the Goods and/or the Services to any third party to whom the Buyer sells, hires or disposes of such Goods and/or the Services.
- 12 **Insurance**
- 12.1 The Supplier shall at its own expense maintain at all times with an insurance office of good repute public liability insurance and professional indemnity insurance in respect of all commercial risks which shall be no less than £5 million in respect of any one claim and no less than £20 million in total.
- 12.2 The Supplier shall produce to the Buyer details of the insurance maintained under this clause at any time on demand by the Buyer.
- 13 **Costs and Expenses**
Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of the Purchase Contract.
- 14 **Relationship of Parties**
Nothing in these Conditions or any document referred to in it or any arrangement contemplated by the Parties shall be construed as creating a partnership or joint venture between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.
- 15 **Amendments and variations**
Subject to clauses 2.5 and 2.6, no variation or amendments to the Purchase Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Buyer.
- 16 **Waivers**
No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Purchase Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.
- 17 **Assignment**
- 17.1 The Buyer shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Purchase Contract or these Conditions through any Affiliate and any act or omission of such Affiliate shall for the purposes of the Purchase Contract be deemed to be an act or omission of the Buyer.
- 17.2 Any Affiliate of the Buyer may utilise the Goods and the Services and the Buyer is permitted to purchase any Goods and Services from the Supplier on behalf of an Affiliate of the Buyer.
- 17.3 The Buyer may at any time assign or transfer (in whole or in part) any of its rights and/or obligations under the Purchase Contract or these Conditions. The Supplier may not assign, sub-Purchase Contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Purchase Contract or these Conditions without the prior written consent of the Buyer (such consent not to be unreasonably withheld or delayed).
- 17.4 If required to do so to give legal effect to any permitted assignment pursuant to the provisions of clause 17.3, the Parties shall enter into a novation agreement and shall use all reasonable endeavours to procure that the assignee or transferee enters into such novation agreement.
- 18 **Severability**
If any term, clause, condition or part of the Purchase Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from the Purchase Contract and shall be ineffective without, as far as is possible, modifying any other provision or part of the Purchase Contract and this shall not affect any other provisions of the Purchase Contract which shall remain in full force and effect.
- 19 **Dispute Resolution**
- 19.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to these Conditions or the Purchase Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiation between appropriate representatives of the Parties, the dispute shall be dealt with using the escalation procedure set out in this clause 19.
- 19.2 The dispute shall be referred by either Party to the chief executives of each of the Parties and they or their nominees shall meet in good faith in order to try and resolve the dispute. If the dispute or difference is not resolved as a result of such meeting either Party may (at such meeting or within 14 calendar days of its conclusion or after the expiry of 28 days following the date of referral to the chief executives) commence proceedings in accordance with clause 23.
- 20 **Entire Agreement**
- 20.1 The Purchase Contract, including these Conditions and any document referred to herein including without limitation the Purchase Contracts, represents the entire agreement between the Parties relating to the sale and purchase of the Goods and/or Services and supersedes all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods and/or Services.
- 20.2 The Supplier agrees that it will have no remedy in respect of any untrue representation innocently or negligently made by or on behalf of the Buyer prior to entering into the Purchase Contract upon which the Supplier relied in entering into the Purchase Contract whether such representation was made orally or in writing. Nothing in the Purchase Contract or these Conditions will exclude or limit the liability of the Buyer for fraudulent misrepresentation.

- 20.3 Each Party agrees that its only remedy for breach of the Conditions or the Purchase Contract shall be for breach of Purchase Contract.
- 20.4 If these Conditions or the Purchase Contract is translated into any language other than English, the English language text shall prevail.
- 21 Notices
- 21.1 Notices under these Conditions may be served by personal delivery, by first class post or by facsimile.
- 21.2 Notices shall be deemed to be served:
- (a) on delivery when delivered personally; or
 - (b) on receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party; or
 - (c) two (2) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.
- 22 PURCHASE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
- Save for parties to whom the Buyer has transferred rights to pursuant to clause 11, an entity which is not expressly a Party to the Purchase Contract shall have no right under the Purchase Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Purchase Contract and the provisions of the Purchase Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Purchase Contract.
- 23 Governing Law
- These Conditions and the Purchase Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-Purchase Contractual disputes or claims) shall be governed and construed in accordance with English law and subject to the provisions of clause 19 the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts, save that the Buyer may elect to bring proceedings in the country where the Supplier is incorporated. To the extent that any mandatory laws, legal requirements, rules, regulations and enactments (including without limitation the Convention) apply to any part of the provision of the Services, such mandatory laws, legal requirements, rules, regulations and enactments shall apply to such Services performed pursuant to the Purchase Contract and shall supersede any conflicting or inconsistent terms within the Purchase Contract.