



## **GTS Flexible Materials Ltd and GTS Flexible Materials GmbH General Terms and Conditions Of Sale**

### **1 About Us**

- 1.1 **GTS Flexible Materials Limited** (company number 01336286) is a company registered in England and Wales with its registered office at 41 Rassau Industrial Estate, Ebbw Vale, Gwent, NP23 5SD and **GTS Flexible Materials GmbH** is a company registered in Germany with its registered office at Spandauer Str. 5, 57072 Siegen, Germany (each individually a '**Company**').
- 1.2 Where Supplies are supplied by GTS Flexible Materials GmbH, reference to 'Company' within these Terms and Conditions shall be reference to GTS Flexible Materials GmbH.
- 1.3 Where Supplies are supplied by GTS Flexible Materials Ltd, reference to 'Company' within these Terms and Conditions shall be reference to GTS Flexible Materials Ltd.
- 1.4 These terms and conditions govern the supply of the Supplies (as defined below) by the relevant Company as detailed on the Purchase Order.

### **2 Interpretation**

The following definitions and rules of interpretation apply in these Terms and Conditions.

#### **2.1 Definitions:**

##### **"Business Day"**

a day other than a Saturday, Sunday or public holiday in England and Wales, when banks in London are open for business.

##### **"Contract"**

the agreement between the Company and the Purchaser for the sale and purchase of Supplies which comprises of the Terms and Conditions, the Purchase Order and any Specification as applicable.

##### **"Data Sheet"**

the data sheet supplied by the Company with the Goods which sets out the material data appertaining to the Goods.

##### **"Force Majeure Event"**

any event beyond the Company's reasonable control including those listed at clause 10.

##### **"Goods"**

any products manufactured and/or designed, and supplied to the Purchaser by the Company in accordance with the Terms and Conditions (and for the avoidance of doubt Goods includes Certificates of Conformance or other documents as defined in the special conditions which apply to the order).

##### **"Items"**

any products supplied by the Company to the Purchaser either (1) where the Company is a distributor for a Third Party Manufacturer and where the Company has not manufactured and/or designed or altered such a product, or (2) where the Company has requested a Third Party Manufacturer to produce or manufacture products and such products have not been altered by the Company.

**“Intellectual Property Rights”**

copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in getup, database rights, rights in data and data sheets, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;

**“Know-how”**

inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);

**“Normal Business Hours”**

9:00 am to 5:00 pm local UK time on each Business Day.

**“Order”**

the Purchaser's order for Supplies as detailed in the Purchase Order.

**“PPAP”**

production part approval process

**“Products”**

any products supplied by the Company to the Purchaser, substantially in the form manufactured by a Third Party Manufacturer but which have been altered by the Company at the request of the Purchaser.

**“Purchaser”**

the person or company whose order for the Goods, Products and/or Items (as the case may be) is accepted by the Company and is named on the Purchase Order.

**“Purchase Order”**

a form issued to the Company setting out the Supplies to be provided by the Company to the Purchaser.

**“Specification”**

the specification for Goods or Products supplied by the Purchaser or proposed by GTS including where applicable any PPAP.

**“Supplies”**

collectively each or any Goods, Products or Items as detailed in the Purchase Order.

**“Terms and Conditions”**

the terms and conditions set out in this document.

**“Third Party Manufacturer”**

a third party which manufactures or supplies Items or parts, materials or equipment incorporated into Goods or Products.

### **“Value Added Tax”**

value added tax chargeable in the UK or any equivalent tax chargeable in Germany.

- 2.2 Any reference in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 2.3 A reference to writing or written includes e-mail.
- 2.4 Any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.
- 2.5 Clause, schedule and paragraph headings shall not affect the interpretation of this Contract.

### **3 Basis of Sale, Quotations, Orders and Specification**

- 3.1 The Company shall sell and the Purchaser shall purchase the Goods, Products and/or Items (as the case may be) in accordance with any Order that is accepted by the Company subject to these Terms and Conditions, which shall govern the Contract to the exclusion of any other terms and conditions that the Purchaser seeks to impose or incorporate. Any terms and conditions of the Purchaser included or referred to in any Order, Purchase Order, or any proposed variation to this Contract, will not be binding on the Company.
- 3.2 Any quotations issued by the Company are to be regarded by the Purchaser as an enticement in soliciting an offer to purchase from the Purchaser in the form of an order. All quotations may be withdrawn or varied by the Company at any time and in any event shall automatically expire after 28 days unless expressly stated otherwise on the relevant written quotation.
- 3.3 An Order issued by the Purchaser to the Company constitutes an offer to purchase the Supplies. The Purchaser shall be responsible for ensuring the accuracy of the terms of any Order (including details in any Specification and/or Purchase Order). The quantity, quality, description and any Specification shall be those set out in the Purchaser Order.
- 3.4 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order at which point the Contract shall come into existence. Unless otherwise agreed by both parties, the Order is deemed to be withdrawn if a written acceptance is not issued by the Company within 14 days of receipt of the Order.
- 3.5 Orders may be submitted by the Purchaser by in writing. The Company shall be under no obligation to despatch any Goods, Products or Items until such written confirmation is received; however if it does despatch any such Goods, Products or Items in accordance with an oral order for which written confirmation has not yet been received the Company's record of such orally submitted order shall form the basis of the order. The Company shall use reasonable endeavours to take accurate records of a Purchaser's oral order.
- 3.6 No Order accepted by the Company may be cancelled by the Purchaser except with the prior written consent of the Company and on terms that the Purchaser shall indemnify the Company in full against all losses (including loss of profit) incurred by the Company as a result of such cancellation.
- 3.7 Each Order for Supplies accepted by the Company shall constitute a separate Contract. The Company reserves the right to amend the Specification of the Goods, Products and/or Items if required by any applicable statutory or regulatory requirements.
- 3.8 Where precise quantities of Supplies are required by the Purchaser, the requirement to include the quantity of Supplies in any Specification or Purchase Order in accordance with clause 3.3 shall not apply and special arrangements must be made between the parties. The Purchaser must notify the Company in writing of such request and obtain the Company's written agreement that clause 4.9 will not apply to such Order.

- 3.9 Rejection by the Company of an Order, including any communication that may accompany such rejection, will not constitute a counter-offer capable of acceptance by the Purchaser.
- 3.10 Marketing and other promotional material relating to the Goods including Data Sheets, samples or drawings are illustrative only and do not form part of the Contract. The Purchaser agrees that, in submitting an Order, it has not relied on any representations or statements by the Company other than those expressly set out in these Terms and Conditions.
- 3.11 Any reference to the Purchaser's material description or code, for items on the Company's documentation, is considered to be an assistance to the Purchaser's administration system and in no way indicates a responsibility to ensure that the material complies with the Purchaser's 's internal codes and local material specifications.

#### **4 Delivery**

- 4.1 The Company shall deliver the Supplies in accordance with the relevant Incoterms 2020 specified in the Purchase Order. If no Incoterms 2020 are specified in the Purchase Order, the Supplies shall be delivered as agreed in writing between the parties.
- 4.2 Where Supplies are supplied by GTS Flexible Materials GmbH, delivery dates shall be agreed on an Order-by-Order basis and confirmed in the relevant Purchase Order.
- 4.3 Where Supplies are supplied by GTS Flexible Materials Ltd, any dates quoted for delivery are approximate only, and the time for delivery is not of the essence.
- 4.4 The Company shall not be liable for any delay in delivery of the Supplies that is caused by a Force Majeure Event or the Purchaser's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Supplies.
- 4.5 Where Supplies are supplied by GTS Flexible Materials Ltd, any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel another instalment.
- 4.6 Where Supplies are supplied by GTS Flexible Materials GmbH, nothing in clause 4.4 shall prevent or limit the Purchaser's right to reject any Supplies due to late dispatch or delivery.
- 4.7 The Company may deliver the Supplies by instalments, which shall be invoiced and paid for separately. Where Supplies are supplied by GTS Flexible Materials Ltd, each instalment shall constitute a separate Contract.
- 4.8 Where Supplies are supplied by GTS Flexible Materials GmbH, unless otherwise expressly agreed, the entire Order shall be treated as one contract in accordance with the statutory standard set out in Section 266 of the German Civil Code (BGB). If the seller fails to deliver one instalment on time, the Purchaser shall be entitled to rescind the entire contract, provided that the Purchaser has first set the Company a reasonable delivery for the delayed instalment. If the Company does not deliver within this additional period, the Purchaser shall be entitled to withdraw from the entire contract in accordance with Section 323 BGB.
- 4.9 Unless special arrangements have been agreed between the parties in accordance with clause 3.8, if the Company delivers up to and including 10% more or less than the quantity of Supplies ordered, the Purchaser may not reject them, and the order will be deemed to be satisfied.
- 4.10 If the Purchaser fails to take delivery of the Supplies or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company, the Company may:
  - 4.10.1 deem the Supplies to have been delivered at 9.00am on the third Business Day after the day on which the Company notified the Purchaser that the Supplies were ready; and
  - 4.10.2 store the Supplies until actual delivery takes place and charge the Purchaser for the reasonable costs (including insurance) of storage and re- delivery.

- 4.11 If ten Business Days after the day on which the Company notified the Purchaser that the Supplies were ready for delivery or collection the Purchaser has not taken or accepted actual delivery of them, the Company may at its discretion:
- 4.11.1 resell the Supplies at the best price readily obtainable;
  - 4.11.2 store the Supplies until the Customer takes possession of such Supplies, and charge the Customer for all storage and related costs and expenses (including insurance); or
  - 4.11.3 otherwise dispose of part or all of the Supplies and (after deducting all reasonable storage and selling expenses) charge the Purchaser for any shortfall below the price due under the Contract.
- 4.12 Unless otherwise agreed in writing delivery of Supplies will be made in industry standard packaging.

## **5 Quality and Audit**

- 5.1 The Company warrants that for a period of 12 months from delivery the mechanical properties of the Goods shall conform in all material respects with the Specification. Where no Specification is given the Company warrants that the Goods and Products shall conform in all material respects to the agreed standards at the time of delivery to the Purchaser.
- 5.2 The Company shall not be liable for the Suppliers failure to comply with the warranties set out in clause 5.1 if:
- 5.2.1 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Purchaser;
  - 5.2.2 the defect arises from any processes carried out by the Purchaser;
  - 5.2.3 the defect arises as a result of wear and tear, wilful damage, negligence or where it could be expected to arise in the normal course of use of the Goods, Products or Items;
  - 5.2.4 the defect arises due to the Purchaser's failure to comply with the Company's written instructions in relation to the Goods, Products and Items including any instructions on installation, operation, storage or maintenance;
  - 5.2.5 the defect arises as a result of the Purchaser modifying any Goods, Products or Items without the Company's prior written consent or, having received such consent, not in accordance with the Company's instructions;
  - 5.2.6 the defect arises as a result of the Purchaser changing the design or Specification or usage of any end product from that notified to the Company in any PPAP; or
  - 5.2.7 the Purchaser uses any of the Goods, Products or Items after notifying the Company of a defect in accordance with clause 5.7.
- 5.3 For the avoidance of doubt, in relation to any defects in Items or parts, materials or equipment (incorporated into Goods or Products or otherwise) provided by a Third Party Manufacturer, the Purchaser shall only be entitled to the benefit of any such warranty or guarantee as is given by the Third Party Manufacturer to the Company and which the Company is entitled by such Third Party Manufacturer to pass on to the Purchaser.
- 5.4 The warranty period shall be limited to a maximum of twelve (12) months from the date of the delivery.
- 5.5 Where the Supplies are supplied by GTS Flexible Materials GmbH, the warranty period shall not apply:
- 5.5.1 in the event of fraudulent concealment of defects by the Company;
  - 5.5.2 where the Company has expressly assumed a guarantee;

- 5.5.3 in relation to work on buildings; and
- 5.5.4 where work whose success consists in the provision of planning and supervision services for this purpose.
- 5.6 Provided that the Company is notified in accordance with clause 5.7 and subject to clause 5.2, any Goods and/or Products that following examination by the Company prove to not comply with the warranty set out in clause 5.1 at the time of delivery will be repaired or replaced free of charge by the Company. Goods and/or Products that the Company agrees to replace must, at the sole discretion of the Company, be returned to the Company or disposed of as per the Company's instructions. Defective Items may be replaced or repaired only with the consent of the Third Party Manufacturer and in accordance with clause 5.3.
- 5.7 Notification of any defects as would be apparent from agreed visual management techniques to the Goods/Products and/or Items, must be received by the Company in writing within five (5) days of delivery of the defective Goods, Products or Items to the Purchaser.
- 5.8 Failure to notify the Company of defects in accordance with clause 5.5 shall preclude the Company from having any liability in respect of the Goods, Products or Items for defects which would be reasonably apparent to a prudent purchaser and the Purchaser shall be bound to pay the price as if the Goods, Products or Items had been delivered in accordance with the Contract.
- 5.9 Except as set out in this clause 5, the Company shall have no liability to the Purchaser in respect of the Supplies' failure to comply with the warranty set out in clause 5.1.
- 5.10 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 Contract.
- 5.11 These Terms and Conditions shall apply to any repaired or replacement Supplies supplied by the Company.
- 5.12 The Company's employees or agents are not authorised to make any representations concerning the Goods, Products and/or Items unless confirmed by the Company in writing by a Director of the Company
- 5.13 The Company shall supply upon reasonable request such quality control and test results as the Purchaser may reasonably require on the understanding that the Company carries out sample testing.

## **6 Limitation of Liability**

- 6.1 Nothing in the Contract limits any liability for:
  - 6.1.1 death or personal injury caused by the negligence of the Company or its employees, agents or sub-contractors (as applicable);
  - 6.1.2 fraud or fraudulent misrepresentation;
  - 6.1.3 any breach of obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982; and
  - 6.1.4 anything else for which the Company cannot at law limit or exclude its liability.
- 6.2 The Company will accept liability for physical damage to the Purchaser's tangible property resulting from the negligence and wilful default of the Company. The Company's liability under this clause including both damage to the Purchaser's property and the Products, Goods or Items shall be limited to an amount equal to the price of the Products, Goods or Items the subject of the Contract. Further and in any event the maximum liability of the Company for a Product (where the defect is attributable to a component supplied by a Third Party Manufacturer) or Item under this sub clause 6.2 shall be limited to that which the Company can recover from the relevant Third Party Manufacturer.

- 6.3 Except as provided in sub-clause 6.1, the Company will not be liable for the following losses or damage:
- 6.3.1 economic loss including administrative and overhead costs;
  - 6.3.2 any indirect or consequential loss;
  - 6.3.3 loss of profits;
  - 6.3.4 loss of business;
  - 6.3.5 loss of contracts;
  - 6.3.6 loss of revenues;
  - 6.3.7 loss of goodwill;
  - 6.3.8 loss of production;
  - 6.3.9 loss of savings, discounts of rebates of every description (whether actual or anticipated);
  - 6.3.10 loss of use;
  - 6.3.11 loss of production;
  - 6.3.12 loss of opportunity;
  - 6.3.13 loss of savings, discount or rebate (whether actual or anticipated);
  - 6.3.14 harm to reputation;
  - 6.3.15 loss of data: or
  - 6.3.16 loss or damage arising from the Purchaser's failure to fulfil its responsibilities in connection with the Contract.
- 6.4 Subject to clause 6.1, the Company's entire liability to the Purchaser shall be limited to the price of the Products, Goods or Items set out in the relevant Purchase Order that the liability relates to.
- 6.5 Any advice or recommendation given by the Company or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods, Products and/or Items which is not confirmed in writing by the Company is followed or acted upon entirely at the Purchaser's own risk and, accordingly, the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 6.6 Clause 6 of these Terms and Conditions shall survive the termination of a Contract.

## **7 Price and Payment**

- 7.1 The price of the Goods, Products or Items shall be as set out in the Purchase Order, or if no price is included, the price shall be as set out in the Company's price list in force as at the date of delivery.
- 7.2 The Company may increase the price quoted for Goods, Products and/or Items by giving notice to the Purchaser before delivery to reflect any increases of prices due to:
- 7.2.1 any reasons beyond the Company's control including, without limitation, increased prices charged by Third Party Manufacturers, increased manufacturing costs, increased delivery costs, foreign exchange fluctuations and increases in taxes and duties;
  - 7.2.2 any request by the Purchaser to change the delivery date(s), quantities, types or specifications of Goods, Products or Items ordered; or

7.2.3 any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Company adequate or accurate information or instructions.

7.3 All prices quoted by the Company shall be in relation to the relevant Incoterms 2020 set out in the Purchase Order unless otherwise agreed in writing and exclusive of Value Added Tax. The Purchaser shall pay all Value Added Tax due in addition to the price due under a Contract on receipt of a Value Added Tax invoice from the Company.

7.4 The Company may invoice the Purchaser for the Supplies on or at any time after the acceptance of the relevant order.

7.5 Unless otherwise agreed by the Company in writing, the Purchaser shall pay each invoice submitted by the Company:

7.5.1 not later than 30 days following the date of the invoice relating to the Supplies;

7.5.2 in full and cleared funds to a bank account nominated in writing by the Company; and

7.5.3 time for payment shall be of the essence of the Contract.

7.6 If the Purchaser fails to make a payment due to the Company under the Contract by the due date, then without limiting the Company's remedies under clause 12, the Purchaser shall pay interest on the overdue sum from the due date until payment of the overdue sum. Interest will accrue each day at 8% a year above the Bank of England's base rate.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8 Risk and Title**

8.1 Risk of damage to or loss of the Goods, Products or Items (for the purpose of this clause collectively referred to as the Supplies) shall pass to the Purchaser:

8.1.1 in the case of Supplies to be delivered at the Company's premises, at the time when the Company notifies the Purchaser that the Supplies are available for collection; or

8.1.2 in the case of Supplies to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Purchaser wrongfully fails to take delivery of the Supplies, the time when the Company has tendered delivery of the Supplies.

8.2 Title in the Supplies shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Supplies in accordance with clause 7.

8.3 Until such time as title in the Supplies passes to the Purchaser, the Purchaser shall hold the Supplies as the Company's fiduciary agent and bailee, and shall:

8.3.1 keep the Supplies separate from all other goods held by the Purchaser so that they remain readily identifiable as the Company's property;

8.3.2 properly store, protect, and insure (against all risks for their full price) the Supplies;

8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Supplies;

8.3.4 notify the Company immediately if it becomes subject to any of the events listed in clause 12.1.2 to 12.1.4; and

8.3.5 provide the Company with such information as the Company may reasonably require from time to time in relation to the Supplies and the ongoing financial position of the Purchaser.

- 8.4 Until such time as title in the Supplies passes to the Purchaser (and provided that the Supplies are still in existence and have not been resold by the Purchaser in the ordinary course of its business) the Company shall be entitled (without prejudice to any other rights it may have) at any time to require the Purchaser to deliver up the Supplies to the Company and, if the Purchaser fails to do so, the Company may enter any premises of the Purchaser where the Supplies are stored and repossess the Supplies. The Purchaser shall do everything reasonably practicable to ensure recovery of the Supplies from any other premises in which they are situated.
- 8.5 Until such time as title in the Supplies passes to the Purchaser, the Purchaser shall be entitled to resell the Supplies in the ordinary course of its business unless the Company revokes this permission which it may do at any time and provided that the Purchaser does so in the normal course of business and at a price which constitutes the full market value of the Supplies and provided that the Purchaser holds in a fiduciary capacity from the proceeds of sale or otherwise of the Supplies the Company's Proceeds (which means a sum equal to the purchase price of the Supplies under the Contract) and keeps the Company's Proceeds separate from any monies or property of the Purchaser and third parties in a separate bank account clearly denoted as an account containing monies deposited for the benefit of the Company and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.6 Until such time as title in the Supplies passes to the Purchaser the Company permits the Purchaser to use the Supplies in the ordinary course of its business provided that such permission may be revoked at any time by the Company and if such use of the Supplies involves the Supplies being incorporated into, combined with or used in the process of creating or manufacturing other goods or items, upon the creation of such other goods or items the Company shall be the legal owner of such other goods or items jointly with the Purchaser and any other suppliers of goods used in such process and beneficial owner of such other goods or items jointly with the Purchaser and such other suppliers (if any) in such proportion as the purchase price of the Supplies under the Contract bears to the overall cost of production of such other goods or items and the Purchaser shall hold such other goods or items as the Company's fiduciary agent and bailee and the foregoing paragraphs of this clause 8 (as applicable) shall apply to such other goods or items.
- 8.7 The Company shall be entitled where the Supplies have become fixed or attached to or incorporated within any other products ("Assembled Goods") to detach the Supplies from such Assembled Goods.
- 8.8 If delivery is made to jurisdictions in which the provisions of this clause do not have the same effect as in England and Wales or where they are held to be unlawful or unenforceable the Purchaser shall ensure that the Company is put in a position which is as similar as reasonably possible to that afforded by the provisions of this clause 8. If any retention of title clauses require registration in order to be enforceable the Purchaser shall procure that the relevant Contract and this clause 8 is registered.

## **9 Publicity Material and Intellectual Property Rights**

- 9.1 All drawings, photographs, illustrations, data sheets and descriptive material accompanying the Company's quotations or contained in any brochure or advertising matter issued by the Company are intended only to represent the general idea of the Goods and/or Products and/or Items described therein and shall not form part of the Contract and shall be treated as approximate and for guidance only unless the Company expressly states in writing otherwise. The Company shall not be liable for any divergence between the Goods and/or Products and/or Items and such drawings, photographs, illustrations or descriptive material. Further the Company reserves expressly the right to vary or modify in any way as appears to it to be reasonable, any part or method of construction of the Goods and/or Products without notice.
- 9.2 The Goods, Products and / or Items may include designs which are the property of the Company ("the Designs"). The Company owns the Intellectual Property Rights in any of the items listed in clause 9.1 and the Designs unless otherwise agreed in writing with the Purchaser. Title to such Intellectual Property Rights and the Designs shall not pass to the Purchaser and shall remain with the Company at all times.

- 9.3 The Purchaser agrees that the Designs may not be reproduced or used in any way except with the prior written consent of the Company.
- 9.4 The Company has not knowingly infringed any Intellectual Property Rights of any third party but does not warrant or give any assurance to the Purchaser that any Design does not infringe the Intellectual Property Rights of any third party.
- 9.5 The Purchaser confirms and warrants that it does not infringe the Intellectual Property Rights owned by or vested in a third party in sending the Specification to the Company and/or requiring the Company to produce the Supplies to such Specification.

## **10 Force Majeure**

The Company shall not be liable to the Purchaser or deemed to be in breach of Contract by reason of any delay, prevention or curtailment in the performance of the Contract by reason of circumstances beyond the control of the Company including (but without prejudice to the generality of the foregoing) war, political dispute, riots, fire, flood, accident, difficulties in obtaining raw materials, transportation, labour, fuel, parts or machinery, strikes, lockouts or other industrial disputes whether involving the third parties or the Company and its own employees. For the avoidance of doubt and without prejudice to the generality of the foregoing, in the event of such circumstances causing delays in delivery of Supplies the Purchaser shall not be entitled to terminate the Contract.

## **11 Indemnity**

- 11.1 The Purchaser shall indemnify and keep the Company indemnified against all costs, expenses, damages and demands incurred by the Company in respect of:
  - 11.1.1 any alleged infringement of any third party patents, trademarks, copyright, design or other industrial property rights by the Company arising out of any request of, or pursuant to any instruction of, the Purchaser in connection with the Contract including without limitation the Specification;
  - 11.1.2 any alleged breach or infringement of any statute or regulation concerning the preparation, marketing and distribution of the Goods, Products or Items arising pursuant to any specific instruction of the Purchaser in connection with the Contract; and
  - 11.1.3 any claims arising and made under the Consumer Protection Act 1987 and which arise by reason of or in connection with a defect in the Goods, Products or Items or in the end product manufactured and/or supplied by the Purchaser in which the Goods, Products or Items are comprised, which defect is attributable either to the compliance by the Company with the instructions given by the Purchaser including without limitation the Specification or attributable to the Purchaser's design of the end product or the combination of the Goods, Products or Items with other products or the use of the end product.

## **12 Termination**

- 12.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Purchaser if:
  - 12.1.1 the Purchaser 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 being notified in writing to do so;
  - 12.1.2 the Purchaser 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), obtaining a moratorium, 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;

- 12.1.3 the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.1.4 the Purchaser's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 12.1.5 Without limiting its other rights or remedies, the Company may suspend provision of the Supplies under the Contract or any other contract between the Purchaser and the Company if the Purchaser becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Company reasonably believes that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.
- 12.1.6 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment.
- 12.1.7 On termination of the Contract for any reason the Purchaser shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Supplies supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Purchaser immediately on receipt.
- 12.1.8 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.

### **13 Anti-bribery**

- 13.1 For the purposes of this clause 13 (anti-bribery) the expressions adequate procedures and associated with shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 13.2 Each party shall comply with applicable bribery laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that all of that party's personnel, all others associated with that party; and all of that party's subcontractors involved in the performance of the Contract so comply.
- 13.3 Without limitation to clause 13.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or improper payment to be made or received on its behalf, either in the United Kingdom, Germany or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 13.4 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 13 (anti-bribery).

### **14 Notices**

- 14.1 Any notice required to be given under this Contract shall be in writing and shall be:
  - 14.1.1 delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at their registered address (if a company) or its principal place of business (in any other case);
  - 14.1.2 delivered by email to the other party to the email address set out on the Purchase Order.

14.2 Notices may be given and are deemed received:

14.2.1 by hand: on receipt of a signature at the time of delivery;

14.2.2 by pre-paid first-class or recorded delivery post: at 9.00am on the second Business Day after posting;

14.2.3 by email: at the time of transmission, or if sent outside of Normal Business Hours, at 9.00am on the next Business Day.

**15 General**

15.1 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.2 **Waiver.** No single or partial exercise or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under the Contract or otherwise.

15.3 **Severance.** To the extent that any provision or part provision of this Contract is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall not be a part of these Terms and Conditions, it shall not affect the enforceability of the remainder of these Terms and Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

15.4 **Entire agreement.** The Contract constitutes the entire agreement and understanding between the parties and supersede all prior agreements, understandings or arrangements (whether oral or written) relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.5 **Third party rights.** No term of these Terms and Conditions is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

15.6 **Governing Law and Jurisdiction.** The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be subject to and construed in accordance with the law of England and Wales. The parties irrevocably agree that all disputes or claims arising out of or connection with the Contract or its subject matter or formation shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

15.7 **Disputes.** The Company and the Purchaser shall use reasonable endeavours to solve all disputes between themselves and the Company may (at its sole discretion) take all actions it considers necessary to resolve such disputes.

15.8 **Assignment.** The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Purchaser may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.