



# GENERAL TERMS AND CONDITIONS OF SALE

(January 2013 Edition)

## 1. General

In these Terms

"Affiliate" means any and all entities, directly or indirectly controlling, controlled by, or under common control with Albéa, where the term "control" shall mean the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of the company, firm, corporation, association, trust or any other entity, whether through the ownership of voting securities, by contract or otherwise.

"Buyer" means the person(s) or company whose written order for the Products is accepted by the Seller;

"Products" means any products which the Seller is to supply to the Buyer (including any of them or any part of them and any packaging);

"Contract" means any contract between the Seller and the Buyer for the sale and purchase of Products;

"Seller's Order Confirmation" means the Seller's written confirmation of the Buyer's order for Products indicating the terms upon which the Products will be supplied and incorporating these Terms.

"Seller" means any Affiliate of the Albéa Group;

"Terms" means the standard terms of sale set out in this document and (unless the context specifies otherwise) includes any special terms agreed in Writing between the Buyer and the Seller; and

"Writing" and any similar expression includes facsimile transmission and comparable means of communication, but not electronic mail.

• These Terms supersede all prior representations or arrangements and contain the entire agreement between the parties in connection with the Products (unless otherwise stated on the Seller's Order Confirmation). All other terms and conditions express or implied, are excluded including those endorsed upon, delivered with or contained in the Buyer's purchase order, specification or similar document. None of the Seller's employees or agents has authority to modify or supplement these Terms or to accept any order except on the Seller's official sales forms if agreed previously in Writing between the authorised representatives of the Buyer and Seller.

• Nothing in these Terms shall restrict the statutory rights of a Buyer who deals as a consumer.

• Subject to the provisions of these Terms, terms defined in the 2010 edition of Incoterms have the same meaning when used in these Terms.

• Any quotation is given on the basis that no Contract will come into existence until the Seller despatches the Seller's Order Confirmation to the Buyer. Any quotation is valid for a period of 30 days only from its date provided Seller has not previously withdrawn it.

• No order which the Seller has accepted may be cancelled by the Buyer except with the written agreement of Seller and on terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs, damages, charges and expenses suffered or incurred by the Seller as a result of such cancellation.

• A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

• The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2. Delivery

• Delivery or despatch dates, quoted or requested, are given or accepted by the Seller in good faith, but are not guaranteed unless stated to be "guaranteed" on the Seller's Order Confirmation. Delays in delivery or despatch dates shall not entitle the Buyer to cancel or terminate the corresponding order(s), or to claim compensation or penalties.

• Delivery shall be made to the place(s) and by the method(s) specified on Seller's Order Confirmation (if not none, ex works). The Buyer is responsible for un-loading.

• Packaging is included in the price and is not returnable unless otherwise stated on the Seller's Order Confirmation. Returnable pallets/packaging will be charged to the Buyer, but if returned clean and in good condition, the Seller will credit the Buyer with the amount charged. Any special packaging requirements will incur a non-refundable additional charge. The Seller shall not be liable for any damage caused by inadequate packaging if such packaging is requested or accepted by the Buyer, or the Buyer has not provided specific transportation instructions to the Seller in Writing.

• The Seller may deliver to the Buyer Products up to 5% more or 5% less than the quantity ordered and the Seller shall pay for the Products delivered pro rata at the Contract rate and the quantity delivered shall be deemed to be the quantity ordered. The quantity stated on the Seller's despatch note shall be conclusive evidence of the amount delivered except in cases of manifest error.

• If for the purposes of Clause 3.5, 6.2 and 7, each delivery shall be treated as a separate contract, and partial deliveries are permitted unless otherwise stated on the Seller's Order Confirmation. Accordingly, failure to make any particular delivery, or any breach of Contract by the Seller relating thereto, shall not affect any remaining deliveries.

• The Buyer shall take delivery of the Products on the date quoted by the Seller (in the Seller's Order Confirmation) or requested by the Buyer or (if none) within a reasonable time. The Seller may deliver early where reasonable. The Seller shall be responsible for all storage and other costs relating to the Buyer's failure to comply with the Contract and shall indemnify the Seller for any such costs. The Seller reserves the right to invoice Product on the agreed date of delivery if the Buyer has postponed receipt of an agreed order which was already in production or produced at the date of postponement.

• The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification, quantity, quality and description) submitted by the Buyer. The Buyer shall perform all necessary controls and verifications to the Products. The Buyer shall be solely responsible for compliance with the regulations in force related to the importing, marketing and use of the Products in their countries of delivery. The Buyer shall be solely responsible for providing appropriate information to its customers and end consumers as to the use of the Products and/or their potential dangers and any consequences which may result therefrom. The Buyer shall promptly supply all information and assistance required for the Seller to execute the Buyer's order.

• If the Products are sold FAS or FOB, an on-board bill of lading, a mate's receipt or other document in proof of delivery alongside the vessel is conclusive evidence of delivery. If the Seller or its carrier is unable for any reason to place the Products on board ship upon their arrival at the port of delivery, a warehouse receipt for the Products shall be treated as sufficient delivery.

• If the Products are sold CIF or C&F, a receipted bill of lading or way bill is conclusive evidence of delivery.

• The Seller undertakes to obtain any Indian license(s) required for the export of the Products from India by the Seller. The Buyer undertakes to comply with any such license(s) and to obtain and comply with all other necessary licenses, permits and consents (including all other import/export licenses).

## 3. Price

• The price of the Products shall be established in the Seller's Order Confirmation. The price established in the Seller's Order Confirmation may be modified by Seller until the date of delivery or performance if one or more factors having been used to establish the price undergo a change, even if such change was foreseeable at the time of the quotation. These factors include but are not limited to: raw materials and components, wages, salaries, governmental charges, freight costs and insurance premiums. Seller shall notify the Buyer of such increases.

• Unless otherwise stated on the Seller's Order Confirmation, prices are delivered ex works (if in India or overseas) and exclusive of VAT and all other duties, fees or taxes. All sums due to the Seller shall be paid in the currency and to the address stated on the Seller's Order Confirmation, or such other address as the Seller may require.

• Unless otherwise stated on the Seller's Order Confirmation, payment is due within 30 days of the date of invoice, but Seller may require security for payment before despatch in the circumstances described in Clause 6.3. Payment shall not be denied, delayed or interrupted for any reason whatsoever.

• Where prices are quoted in currencies other than Indian Rupees, the Buyer shall indemnify the Seller in full for any currency losses suffered by the Seller as a result of the Buyer's failure to pay the Products in accordance with Clause 3.2.

• Unless prices are stated to be fixed on the Seller's Order Confirmation, the Seller may increase prices in accordance with increases in the Seller's costs (such as, without limitation, any currency revaluation, alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture) and/or general price list increases occurring after the date of the Seller's Order Confirmation but before despatch. The Buyer shall pay for any increases in delivery costs after the date of the Seller's Order Confirmation.

• In the circumstances described in Clause 6.3, all unpaid balances owing to the Seller from the Buyer shall become a debt immediately due and payable to the Seller, irrespective of whether property in the Products has passed to the Buyer.

• Time of payment is of the essence of the Contract. The Seller may charge interest at 3.5% above the State Bank of India base rate per annum for the time being on any sum owed to the Seller under the Contract which is not paid on the date specified in Clause 3.3, after as well as before any judgement (a part of a month being treated as a full month for the purpose of calculating interest). The Buyer may not withhold payment or make any set-off on any account.

• The Seller may set-off appropriate sums received from the Buyer against any debt due to the Seller from the Buyer (under this or any other contract), irrespective of any potential appropriation by the Buyer.

## 4. Seller's Warranty

• Subject to 4.6 the Seller warrants that upon delivery the Products:-

• are sold with good title; and

• comply with the Seller's current published Product data sheets (or, where there are none, that they comply with any specification appearing on the Seller's Order Confirmation and are made with sound materials and workmanship to normal standards accepted in the industry), in all material respects (-Seller's Warranty-).

The Seller does not warrant that the Products are fit for any particular purpose or of intended use by the Buyer, and it is for the Buyer to satisfy itself that the Products are so fit.

• The above warranty is given subject to the following conditions:

• the Seller shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;

• the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or written), misuse or alteration or repair of the Products without the Seller's approval, transportation or means of transportation used, storage conditions, defects attributed to the design of the final product incorporated into the Product or into which the Product is incorporated, or to the instructions of the final product's manufacturer, non-conformity resulting from the application of mandatory legal or regulatory rules, and defects reasonably unknown given the state of scientific and technical art at the time of manufacturing;

• the Seller shall (subject to Clause 4.7) be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;

• the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

• Seller's Warranty is given (subject to Clause 4.7) on the condition that any instructions of the Seller relating to the storage and use of the Products are strictly complied with. The Buyer shall inform its own customers and subcontractors of such terms. If the Buyer does not provide such information the Seller shall not be liable on such basis.

• The Buyer shall examine the Products as soon as reasonably practicable after receipt by the Buyer in India under the Consumer Protection Act 1986 (the CPA), but only to the extent that the Seller is itself liable under the CPA for the claim in question because the Products were defective (within the meaning of the CPA) at the time of delivery by the Buyer or ought reasonably to have become aware of any of the above, and in any event before the earlier of:

• 6 months from the date of despatch by the Seller; and

• 30 days after the Products have been used or put into process.

The Buyer shall (subject to Clauses 4.7 and 9.1) be treated as having accepted the Products and have waived all claims connected with the matter which should have been notified.

• Subject to notification within the period required by Clause 4.4, if it is shown to the Seller's reasonable satisfaction that the Products fail materially to comply with the Seller's Warranty, the Seller shall be given a reasonable opportunity to correct such failure, and, if the Seller does not, or is unable to do so, the Seller will, at the Seller's option, either refund the purchase price by way of credit note (or, if the Products have depreciated for reasons other than Seller's default or have been used or put into process, a reasonable part of the purchase price), or replace the Products (if reasonably practicable) within a reasonable time, free of charge. Such correction, refund or replacement shall, subject to Clause 4.7 below, and to Clause 9.1, be the Seller's sole liability in relation to any such defective Products. Replacement Products are covered by these Terms, including Seller's Warranty. Products which are alleged not to comply with the Contract shall as far as possible be preserved for inspection by the Seller, and, if replaced, or if a refund is made, shall be returned to the Seller (at Seller's cost) if Seller reasonably so requests.

• Clause 4.1(i) does not apply to seconds, remainder stock or samples, or to goods sold as obsolete or sub-standard.

• The Seller does not exclude any liability which cannot be excluded as between the Buyer and the Seller under any Indian legislation.

• If the Products are intended by the Buyer to be and are in fact resold by the Buyer in India to individuals) without further processing, testing or inspection, the Seller will reimburse the Buyer for any direct damages and costs actually finally awarded against or incurred by Buyer in India under the Consumer Protection Act 1986 (the CPA), but only to the extent that the Seller is itself liable under the CPA for the claim in question because the Products were defective (within the meaning of the CPA) at the time of delivery by the Seller. The Seller shall not be liable to the extent that any liability is the Buyer's responsibility under Clause 9.4(i) or arises from any default of the Buyer (including but not limited to any failure by the Buyer to ensure that the Products are sold only for uses recommended by the Seller), or where the Buyer knew or ought reasonably to have known of the said defect.

• It is a condition of the Buyer's right of recovery under Clause 4.7 that the Buyer shall notify the Seller of any relevant claim within 5 days following the discovery of the non-conformity or defect, shall comply with the Seller's reasonable requirements to minimise liability and/or avoid further liability, and shall allow the Seller conduct of any action and/or settlement negotiations.

## 5. Force Majeure

• The Seller shall not be liable for any delay in complying, or failure to comply with the Contract related to any circumstances whatever (whether or not involving the Seller's negligence) which are beyond the Seller's reasonable control and which prevent or restrict the Seller from complying with the Contract.

Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

• act of God, earthquake, storm, hurricane, explosion, flood, tempest, fire, accident or other natural disaster;

• war or threat of war, sabotage, insurrection, terrorist activities, civil disturbance or requisition;

• acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

• import or export regulations or embargoes;

• strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

• difficulties in obtaining raw materials, labour, fuel, parts or machinery; and

• The Seller may where reasonable in all the circumstances (whether or not involving the Seller's negligence) without liability suspend or terminate (in whole or in part) its obligations under the Contract, if the Seller's ability to manufacture, supply, deliver or acquire materials for the production of the Products by the Seller's normal means is materially impaired. Subject to Clause 6.1, if the Seller suspends its obligations under the Contract, performance time schedules shall be extended and the relevant order(s) shall remain in effect.

## 6. Termination and Suspension

• Except where the Buyer has caused or contributed to any delay, the Buyer may (as the Buyer's sole remedy, without affecting the balance of the Contract) terminate the Contract by notice to the Seller in Writing in respect of any instalment of Products which is not despatched within 90 days after any date quoted on the Seller's Order Confirmation (unless the Products have been specially manufactured or adapted for the Buyer). The Buyer will take delivery and pay for all Products manufactured up until the date of termination.

• The Seller may (without prejudice to its other rights or remedies) terminate or suspend the Seller's performance of the whole or any outstanding part of the Contract in the circumstances described in Clause 6.1. The Seller may also suspend deliveries while investigating any claim relating to prior shipments (under any Contract) of Products. If the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. If the Buyer fails to pay to the Seller the price of all Products delivered but not paid for immediately upon notification to the Buyer in Writing, the Seller shall be entitled to take possession of all Products and documents related thereto on the Buyer's premises, without notice. The Buyer shall be liable for the payment of all expenses and disbursements incurred by the Seller or its sub-contractors in retaking possession of the Products.

The relevant circumstances are if:

- The Buyer fails to take delivery of or to pay for the Products on the date required under Clause 2.6 or 3.2 respectively, or breaches any other term of the contract; or
- The Buyer becomes bankrupt or insolvent, enters administration, becomes a sick industrial company, goes into liquidation or makes a voluntary arrangement with its creditors, or if a receiver is appointed or an embarrancer takes possession of any material part of the Buyer's assets, or the Buyer suffers any foreign equivalent of the foregoing; or
- The Seller has reasonable grounds for suspecting that an event in Clause 6.3 (i) or (ii) has occurred or will occur, or that the Buyer will not pay for the Products on the due date, and so notifies the Buyer.

• If the Buyer provides the Seller with security for the contract price, reasonably acceptable to the Seller, within three working days after a notice has been given under Clause 6.3(i), the Seller shall withdraw the notice.

## 7. Risk and Title

• Risk of damage to or loss of Products shall pass to the Buyer upon delivery.

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

• the Products; and

• all other sums which are or which become due to the Seller from the Buyer on any account.

• Until ownership of the Products has passed to the Buyer, the Buyer must:

- hold the Products on a fiduciary basis as the Seller's fiduciary agent and bailee;
- store the Products (at no cost to the Seller) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
- not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- maintain the Products in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller;
- hold the proceeds of the insurance referred to in Clause 7.3(i) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdraft bank account; and
- immediately notify the Seller in Writing by registered AD with return receipt, of any material or legal incidents (such as inter alia, any seizure by a third party) which may affect the Seller's ownership of the Products.

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

- any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to the Seller accordingly;
  - any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale; and
  - the Buyer shall hold the proceeds of any such subsale as trustee for the Seller separate from its own invoices in a separate designated bank account.
- Where the Seller is unable to determine whether any goods are the Products, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.
- The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to recover them.

• If the Buyer incorporates the Products into another product or alters them by manufacture or by mixing them in any way with other goods, property in the resulting product shall pass into the ownership of the Seller until all payments due under all contracts between the Buyer and Seller have been made in full.

• The Seller shall not be deemed to pledge or in any way give way of security for any indebtedness any of the Products which remain the property of the Seller, but if the Buyer does so, the Seller shall be entitled to require the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

• In the event of total or partial late payment of any invoice, and without prejudice to any other rights and remedies, the Seller expressly reserves the right to retake possession of the Products. The Buyer shall return the Products at its sole risk and expense to the Seller immediately upon demand.

## 8. Tooling

• 8.1 Unless otherwise provided for, toolings, equipment, machines, molds, prototypes, etc. ("Tooling") shall remain the Seller's property as an integral part of its production resources and intellectual property, even in the case where the Buyer makes a financial contribution and/or, in the case where it contributes to the definition of the specifications.

• 8.2 Any financing by the Buyer in view of covering all or part of the cost for producing the Tooling shall in no event justify the transfer of the ownership of the Tooling to the Buyer, and shall not authorise the Buyer to transfer the Tooling to another supplier without the Seller's prior consent in Writing. Such financing shall not limit the Seller's production of products with such Tooling for other customers.

• 8.3 Only the Seller's name shall be marked on the Tooling. Unless otherwise provided, when tooling is provided by the Buyer or it is expressly agreed, as an exception, that such tooling shall be produced for the Buyer and shall belong to the Buyer and the invoice of such tooling is paid by the Buyer, the tooling shall remain the Buyer's property. The Seller shall be liable for all costs and expenses (development, repairs, modifications and restorations, duties, taxes, etc.) in connection with such tooling and the Buyer shall be deemed to have accepted such costs and expenses, if any. Such tooling shall be kept on the Seller's premises and the Seller shall maintain the tooling and keep it in normal working order with respect to its service life and its specific characteristics as stated and agreed in writing in the title of its delivery by or for the Seller.

Such tooling must be properly insured by the Buyer against damage to it or its destruction. The Buyer waives all recourse against the Seller and its insurers on such basis and shall ensure that its insurers also waive such recourse.

• 8.4 Tooling shall be returned solely at the expiration of the order related to the relevant Products, upon the Buyer's request in Writing, with all associated costs paid by the Buyer and after payment by the Buyer of all amounts due to the Seller (regardless of the due date of such amounts).

## 9. Intellectual Property and Third Party Claims

• Subject to clause 9.2 the Seller will defend the Buyer against any third party claim made against the Buyer in India alleging that the Products as such, in the original state sold by the Seller, infringe any patent, registered design, trademark, trade name or copyright effective in India of any third party, and the Seller will pay any damages and costs finally awarded against the Buyer in India of any third party in respect of such a claim. The Seller may modify the Products so that they cease to infringe so long as the Buyer is not substantially prejudiced by the modification. The foregoing applies provided that:

- the Seller is given full control of any proceedings or negotiations in connection with the claim;
- the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- except pursuant to a final award, the Seller shall not pay or accept the claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this clause 9.1 shall apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- the Seller shall be entitled to the benefit of, and the Buyer shall accordingly accord to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- without limiting any duty of the Buyer at common law, the Seller may require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to the Buyer under this clause.

• Clause 9.1 shall not apply to the extent that the Products are manufactured to the Buyer's specification (or as provided in Clause 9.4(i)) or in respect of any use of the Products not contemplated by the Seller at the date of the Seller's Order Confirmation.

• The Buyer shall not use any trademarks or trade names applied to or used by the Seller in relation to the Products in any manner not approved by the Seller.

• The Seller shall indemnify and hold harmless the Seller against any liability, claim, losses, damages, costs or expenses incurred by the Seller:

• As a result of incorporating property of the Buyer in the Products, or applying any trademark, trade name or design to the Products, on the Buyer's instructions, or complying with any other instructions of the Buyer relating to the Products; and

• In relation to any third party claims arising from the use made of dealings by the Buyer in the Products (irrespective of whether they involve the negligence of the Seller, its agents or employees), except as provided in Clause 9.1 and 4.7, or if arising from the Seller's willful default or fraud.

• The indemnified party shall promptly notify the other of any relevant claim, shall comply with the other's reasonable requirements to minimise liability and/or avoid further liability, and shall allow the other conduct of any action and/or settlement negotiations on reasonable terms.

## 10. Advice and Assistance

• The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

• The Seller shall not be liable in contract, tort or otherwise, and irrespective of the negligence of the Seller, its agents or employees for any representations, advice or assistance given (under this Contract or otherwise and whether before or after the date of the Contract) by or on behalf of the Seller in connection with the Products or the Contract.

• Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 11. Limitation of Liability

• Without prejudice to any other limitation of the Seller's liability (whether effective or not);

• In no circumstances whatever shall the Seller, any of its subsidiaries or holding company, each as defined under the Companies Act, 1956 or its Affiliate, be liable (in contract, tort or otherwise, and irrespective of any negligence or other act, default or omission of the Seller or its employees or agents) for any indirect or consequential losses (including loss of goodwill, business or anticipated savings), loss of profits or use, or, subject to clauses 4.7 and 9.1, any third party claims, in connection with the Products or the Contract.

• Except as provided under Clauses 4.7 and 9.1 the Seller's, any of its subsidiaries' or holding company's, each as defined under the Companies Act, 1956 or its Affiliate's total aggregate liability in connection with the Products or the Contract (in contract, tort or otherwise, and whether or not related to any negligence or other act, default or omission of the Seller or its employees or agents) is limited to the Contract price ex-works and excluding VAT.

• Without prejudice to the Seller's Warranty, the Buyer's sole remedy shall be in damages.

• The Seller's Warranty and the Buyer's remedies under Clause 4.7 and Clause 9.1, are in substitution for any other warranties, obligations, representations, liabilities, terms, or conditions (whether they are express or implied or arise in contract, tort or otherwise, and irrespective of the negligence of the Seller, its employees or agents) in connection with the Products (including, without limitation, any relating to merchantability, fitness for purpose, conformity with description or sample, care and skill or compliance with representations, but excluding implied statutory warranties relating to title), and all such warranties, obligations, representations, liabilities, terms or conditions are hereby expressly excluded to the fullest extent permitted by law.

• Without prejudice to Clause 4.4, no action may be brought against the Seller in connection with the Products or the Contract, unless proceedings are issued against the Seller within two years from the date on which the cause of action has arisen.

• This Clause 11 applies notwithstanding any fundamental breach or breach of a fundamental term of the contract by the Seller.

• Nothing in these Terms excludes or limits the liability of the Seller for direct or personal injury caused by the Seller's negligence, willful misconduct or fraudulent misrepresentation.

• The Buyer shall indemnify the Seller against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Seller by any third party except to the extent the Seller is liable to the Buyer in accordance with these Terms.

## 12. Health and Safety at Work

• The Buyer shall ensure that all Products are safely and lawfully received, stored, maintained, used or applied by the Buyer, and that the Buyer obtains relevant information in the Seller's possession relating thereto.

• The Buyer shall ensure that all appropriate safety information (whether supplied by the Seller, the Buyer or others) is distributed and drawn to the attention of customers and all others (including the Buyer's employees) who require it for the safe handling or use of the products.

## 13. Miscellaneous

• The Contract may not be assigned by the Buyer without the Seller's prior written consent. Notices must be in writing to the Seller's or the Buyer's registered address and are deemed delivered on the first working day after sending by hand or (subject to confirmation of transmission) by telex or facsimile, or within India, on the third working day after being placed prepaid in the first class post to the Buyer's or the Seller's Indian address. Qualified acceptances by the Buyer on delivery notes shall not constitute notice of any claim or acceptance by the Seller of any such qualification.

• No failure by the Seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach of the same or any other provision.

• If any provision of the Contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or if not so permitted, shall be deemed deleted. The validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

• All amendments hereto shall be in writing or shall be invalid.

## 14. Other Tests or Services

• If the Seller shall perform any tests or render any other services to the Buyer at the Buyer's request beyond the obligations imposed by the Contract, the Seller shall not in any event incur any liability (whether or not for negligence save when and insofar as the Seller's negligence has caused death or personal injury) in respect thereof unless the Seller shall have agreed otherwise in writing.

## 15. Law – Settlement of disputes

• This contract shall be governed by and construed in accordance with the laws of India, and each Party hereby submits to the exclusive jurisdiction of the courts of Goa in relation to any claim, dispute, or difference concerning this contract and any matter arising from it.