

Terms and Conditions

1. INTERPRETATION

1.1 In these conditions the following words and expressions shall have the meanings ascribed to them below save where this is inconsistent with the context:

"Agent" means a person, firm or company nominated in Writing by the Seller to act on its behalf.

"Buyer" means the person, firm or company who accepts the quotation of the Seller for the sale of Goods or whose order for the Goods is accepted by the Seller.

"Companies Act" means the Companies Act 2016 of Malaysia, as amended, modified and supplemented from time to time.

"Goods" means the goods (including any instalments for the goods or any parts for them) which the Seller is to supply to the buyer and which are supplied in accordance with these Conditions.

"Seller" means Polyflor (M) Sdn. Bhd. (incorporated in Malaysia under company registration number 201901041186 (1350516-T)).

"Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in Writing between the Buyer and the Seller.

"Contract" means the contract between the Buyer and the Seller for the purchase and sale of the Goods which incorporates these Conditions.

"Price" means the price of the Goods to be paid by the Buyer to the Seller, stated in the Seller's quotation, the Relevant Price List or otherwise conveyed by the Seller in Writing to the Buyer.

"Subsidiary" or "Holding Company" means a subsidiary or holding company as defined in Section 4 of the Companies Act.

"Verbal Order" means any order received from the Buyer and accepted by the Seller by telephone.

"Writing" includes, facsimile and email.

1.2 Any reference in these 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.

1.3 The headings in these Conditions are for convenience only and shall not affect their representation.

1.4 Singular includes plural and vice versa.

1.5 Any phrase introduced by the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 In these Conditions "Incoterms" means the International Rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase these Goods in accordance with any written quotation of the Seller which is accepted by the Buyer (in accordance with Clause 3.2), or any written order of the Buyer which is accepted by the Seller (in accordance with Clause 3.1), subject in either case to these Conditions, which shall govern the Contract to the exclusion of and shall be deemed to take precedence over any other terms and conditions (save in the event that any of these Conditions are illegal or unenforceable pursuant to the laws of Malaysia from time to time applicable).

2.2 These Conditions shall apply to all sales (including export sales) by the Seller.

3. ORDERS AND SPECIFICATIONS

3.1 The Seller may accept or reject any order it receives. Any order submitted by the Buyer is only accepted by the Seller when it is acknowledged by the Seller in writing or when the Seller commences work upon such order.

3.2 No quotation submitted by the Seller shall be capable of acceptance by the Buyer only if such quotation has been confirmed in Writing by the Seller and no such quotation shall be deemed to be accepted by the Buyer unless and until confirmed in Writing by an authorised representative of the Buyer without any alteration or supplement to any terms set out in the quotation confirmed in Writing by the Seller.

3.3 The Buyer shall be responsible for ensuring the accuracy of the terms, including the quantity, quality and description of, and any specification for, the Goods, before issuing a Buyer's order or accepting a Seller's quotation. If any of the information set out in the quotation is inaccurate or incorrect, the Buyer must promptly notify the Seller in writing before accepting such quotation.

3.4 The Seller makes no representation and confirmation as to the fitness and adequacy of the Goods for the use of the Buyer, whether or not the Buyer has made known the intended use of the Goods to the Seller.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or statutory requirements, or where the Goods are to be supplied to the Seller's specification which do not materially affect the quality of performance.

3.6 No order which has been accepted by the Seller or quotation accepted by the Buyer may be cancelled by the Buyer except with the agreement in Writing of the Seller and on such terms and subject to such cancellation fee as the Seller in its absolute discretion may consider appropriate to cover all costs, expenses and losses including loss of profit incurred, as a result of the cancellation.

3.7 No addition or variation to any contract may be made by the Buyer unless accepted by the Seller in Writing. Any purported addition or variation shall be treated as a separate and additional order to the Contract and shall be priced separately in accordance with Clause 4.

3.8 The Seller makes no warranty that, and the Buyer acknowledges that, no colour match in respect of the Goods can be guaranteed from batch to batch and/or in respect of each order or quotation.

3.9 Orders for non-standard Goods may not be varied by the Buyer once the Seller has either commenced the manufacture of the Goods or ordered any materials and/or equipment for the Goods.

3.10 In the case of Verbal Orders the Buyer will be asked for verbal confirmation of his order by the Seller at the end of the telephone call. When this confirmation has been given by the Buyer no Verbal Order can be cancelled or varied except under the conditions stated in Clause 3.6 or 3.7 (as the case may be) above.

4. PRICE OF THE GOODS

4.1 The Price of the Goods shall be the price stated in the Seller's quotation or, where no Price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of an order from the buyer or of a quotation by the Seller (as appropriate) ("Relevant Price List"). Where the Goods are supplied to the Buyer specifically for export from Malaysia, unless specifically provided for in the Seller's quotation, the Seller's published export price list shall apply.

4.2 Subject to Clause 4.3, all prices quoted are valid for 30 days only or such other period as may be stated in the relevant quotation, or until earlier acceptance by the Buyer, after which time the Price of the Goods quoted for shall be the Price listed in the Relevant Price List.

4.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price of Goods to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller, including the failure of the Buyer in providing prompt confirmation of purchase or in providing adequate information for the purchase or take delivery.

4.4 The Price is exclusive of any applicable sales and service tax ("SST") and/or such other tax and duty (including Withholding Tax) payable on the Goods ("Applicable Taxes") which the Buyer shall be additionally liable to pay the Seller.

4.5 In addition to the Price and Applicable Taxes, the Buyer shall be obliged to pay a carriage charge (and unless specified otherwise by the Seller, packaging and/or fixing charge) as detailed in the Seller's quotation or on the Relevant Price List.

4.6 All pallets and returnable containers used for the purpose of delivery of the Goods as per Buyer's order must be returned in an undamaged condition to the Seller before the due payment date.

4.7 Any quotations which are given in respect of the supply of Goods and/or fixing are given subject to Clause 5.1 and also subject to the work required only to be carried out during normal working hours and under normal conditions. In the event that any quotation given pursuant to this Clause 4.7 is not accepted within the time limit specified in such quotation or if no such limit is specified, within 30 days of the date of quotation, the proposed Buyer shall be required to issue a revised order or accept a revised quotation to be issued by the Seller, in which case, the revised order or quotation may be subject to amended terms (including the Price) as the Seller may deem fit. In the event that all or any of the work is not carried out during normal working hours, or under normal working conditions or is delayed or suspended for whatever reason including those matters set out in Clause 10, the Seller reserves the right to charge such additional fees and impose such additional conditions (including revised mode or timing of delivery) as it considers appropriate in the circumstances.

5. TERMS OF PAYMENT

5.1 The Seller shall be entitled to invoice the Buyer for the Price together with the Applicable Taxes and any carriage charge and packaging and/or fixing charge (unless specified otherwise by the Seller) (as set out in Clause 4.5) at any time after a Buyer's order has been confirmed by the Seller or the Seller's quotation has been accepted by the Buyer in accordance with Clause 3.

5.2 Unless the Seller has agreed to extend credit to the Buyer, the Buyer shall pay the Price of the Goods (less any discount the Buyer as may be granted by the Seller in its absolute discretion) by the 25th day of the month following the month during which the Invoice in respect to the Price of the Goods is issued by the Seller (or if not a working day, the next preceding working day) notwithstanding that delivery (as defined in Clause 6) may not have actually taken place and that the property in the Goods has not passed to the Buyer. The time for payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only on request.

5.3 If the Buyer fails to make payment in full by the due date for payment in accordance with Clause 5.2 in respect of the Contract or in respect of any other goods or services provided to the Buyer by the Seller or any Subsidiary or Holding Company of the Seller then, without prejudice to any other right or remedy available to the Seller under the Contract or in law, the Seller shall be entitled:

5.3.1 to cancel the Contract and/or suspend any further deliveries to the Buyer;

5.3.2 to charge the Buyer interest (both before and after any judgement) on the amount unpaid calculated on a daily basis, at the rate of 1.5% per month (or such other interest rate as may be specified in Writing by the Seller from time to time), from the due date of payment until payment in full is made; and/or

6 DELIVERY

- 6.1 Delivery of the Goods shall be deemed to take place either:
- 6.1.1 by the Seller delivering the Goods to such place as is agreed between the Seller and the Buyer. For the purpose of this Clause 6.1.1 delivery shall be deemed to take place immediately upon the arrival of the delivery vehicle at the premises of the Buyer or of any nominated third party, as the case may be; 6.1.2 by the Buyer collecting the Goods at the Seller's premises. For the purpose of this Clause 6.1.2 collection shall be deemed to take place immediately upon the arrival of the collection vehicle at the premises of the Seller or such other place as the Goods are to be collected from, or immediately upon the Seller notifying the Buyer that the Goods are ready for collection by the Buyer, whichever is the earlier; or
- 6.1.3 at the time stated for delivery, or if none is stated, when the Seller would have made the delivery but for the failure of the Buyer to provide the Seller with adequate delivery instructions or to dispatch the Buyer's collection vehicle.
- 6.2 Any dates quoted for delivery of the Goods by the Seller are approximate only. The Seller is not obliged to meet such dates and will not be liable to the Buyer by reason of delays caused by any reason whatsoever.
- 6.3 The Seller shall be entitled to deliver the Goods in instalments if it thinks fit. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract, but failure by the Seller to deliver any one or more of the instalment(s) in accordance with the Contract or any claim by the Buyer in respect of any one or more instalment(s) shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's wilful default) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods and charge the Buyer for the costs (including insurance of storage), until:
- 6.4.1 actual delivery of the Goods; or
- 6.4.2 sale of the Goods by the Seller at a price readily and reasonably obtainable and (after deducting all storage and selling expenses):
- (a) account to the Buyer for the excess over the Price (and interest as provided in Clause 5.3.2) under the Contract (if any); or
- (b) charge the Buyer for any shortfall below the Price under the Contract and interest as provided in Clause 5.3.2.

7 RETURNS

- 7.1 Save as otherwise provided in these Conditions, Goods supplied in accordance with the Contract cannot be returned without the Seller's prior written consent.

8. RISK AND TITLE OF GOODS

- 8.1 Unless otherwise specified herein, risk of damage to or loss of the Goods shall pass to the Buyer at the time of deemed delivery in accordance with Clause 6.1.
- 8.2 Notwithstanding the passing of risk in the Goods, or any other provision of these Conditions, the ownership, property and legal title of all Goods supplied by the Seller shall not pass to the Buyer until payment in full of all sums owing to the Seller under this or any other Contract, has been received by the Seller in cleared funds.
- 8.3 Until such time that the ownership, property and legal title in the Goods passes to the Buyer:
- 8.3.1 the Seller retains ownership, property and legal title of the Goods;
- 8.3.2 the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee; and
- 8.3.3 the Buyer shall keep the Goods under its possession and control, in good repair and condition (fair wear and tear excepted) and shall ensure that the Goods are properly stored, protected, insured and clearly identified as the Seller's property separate from that of the Buyer or any third party.
- 8.4 Without prejudice to the foregoing clauses and before payment in full of all sums owing to the Seller under this or any other Contract, the Buyer shall be at liberty to, with prior written consent of the Seller:
- 8.4.1 resell the Goods as the Seller's Agent by way of bona fide sale in the usual and proper course of its business and in such event the relationship between the Seller and the Buyer shall be of a fiduciary nature; or
- 8.4.2 use the Goods in a manufacturing or construction process of its own or some third party; provided that the Buyer shall hold such part (i.e. an amount owing by the Buyer to the Seller under the Contract at the time of the said resale or at the time the Goods are used in the said manufacture or construction process) of the proceeds of sale or any dealing in the Goods to the Seller's account and in trust for the Seller and shall not mingle such proceeds with other monies or pay them into an overdrawn bank account and shall keep such proceeds at all times identifiable as the Seller's monies until such time as such proceeds are paid to the Seller on demand.
- 8.5 Until such time as the ownership, property and legal title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may require the Buyer to return the Goods to the Seller immediately on demand at the Buyer's costs, failing which the Seller shall be entitled without further notice to enter upon any premises of the Buyer or a third party owner of a place where the Goods are stored and do all things necessary to repossess the Goods. The Seller shall be entitled to keep or resell any of the Goods repossessed.
- 8.6 The Buyer hereby grants full leave and irrevocable licence to the Seller and any person authorised by the Seller to enter upon any premises of the Buyer and

confirms that it has procured or shall procure authorisation from the third party owner of the place where the Goods are or will be stored for the purpose of repossessing the Goods in accordance with Clause 8.5, and the Buyer agrees that it will:

- 8.6.1 be liable for all costs, damages, expense or any other sums of money incurred or suffered by the Seller (whether direct or indirect) as a result of the Seller repossessing the Goods or otherwise exercising its right under this Clause 8.6; and
- 8.6.2 indemnify the Seller in accordance with Clause 12.
- 8.7 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) become immediately due and payable.

9 WARRANTIES AND LIABILITY

- 9.1 The Contract shall not constitute a sale or supply by description or sample.
- 9.2 Subject as expressly provided in these Conditions and except for any condition or warranty the exclusion of which could be void or otherwise contravene the Consumer Protection Act 1999 or other equivalent consumer or competition law in Malaysia, any conditions or warranties (whether express or implied by statute or common law or arising from conduct or previous course of dealing or trade custom or usage) as to the quality of the Goods and/or the services with any description or sample are hereby excluded to the full extent permitted by law.
- 9.3 In addition to Clause 9.2, the attention of the Buyer is specifically drawn to the following exclusions:
- 9.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;
- 9.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), or technical manual, misuse or alteration or repair of the Goods without the Seller's approval;
- 9.3.3 the Seller shall be under no liability in respect of any part of the Goods or material used in the preparation of the Goods not manufactured by the Seller, and the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;
- 9.3.4 the Seller shall be under no liability in respect of any defect in the Goods due to or arising out of the acts, omissions, negligence or default of the Buyer or the Buyer's employees, consultants, suppliers or agents including in particular (but without limitation) any failure by the Buyer to comply with any recommendations of the Seller as to the storage and handling of the Goods.
- 9.4 Where the Goods are sold by the Seller to a consumer (as defined by the Consumer Protection Act 1999) the statutory rights of the Buyer under the Consumer Protection Act 1999 and any regulations enacted thereunder or such other applicable laws and regulations are not affected by these Conditions.
- 9.5 If the Buyer does not advise the Seller in writing of any defect in quality, quantity or condition of the Goods or failure of Goods to comply with the terms of the Contract (whether or not delivery is refused by the Buyer and whether or not the defect or failure was apparent on reasonable inspection) within 3 days of delivery to or collection by or on behalf of the Buyer:
- 9.5.1 the Buyer is deemed to have accepted the Goods and is deemed to have agreed that the Goods are not faulty, damaged or defective and comply with the terms of the Contract;
- 9.5.2 the Buyer releases and discharges the Seller from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Goods or any failure of the Goods to comply with the terms of the Contract; and
- 9.5.3 the Buyer shall be bound to pay the Price together with the Applicable Taxes and any carriage, packaging and/or fixing charges as if the Goods had been delivered in accordance with the Contract.
- 9.6 Where any valid claim, which is based on any defect in the quality or condition of the Goods or their failure to comply with the terms of the Contract, the Seller shall be entitled at his discretion and election to (a) refund to the Buyer the Price of the Goods (or a proportionate part of the Price); or (b) replace the Goods (or the part in question) which in its opinion is faulty, damaged or defective or not in compliance with the terms of the Contract free of charge, if:
- 9.6.1 the Buyer advises the Seller in writing of a fault, damage or defect in Goods or a failure of Goods to comply with the terms of this Contract within 3 days of delivery to or collection by or on behalf of the Buyer;
- 9.6.2 the Buyer has not used the Goods;
- 9.6.3 the Buyer returns the non-complying Goods to the Seller within 3 days after authorisation by the Seller (or its authorised representative) and where applicable the issue of a goods return number by the Seller; and
- 9.6.4 the Buyer pays a restocking fee including a return freight charge.
- For the avoidance of doubt, in the case of a defect discoverable before the Goods are laid the Seller shall be under no liability whatsoever to the Buyer in respect of any such defect if the Buyer has proceeded to lay the Goods.
- 9.7 Where any valid claim, which is based on short delivery, is notified to the Seller and the carrier within 3 days from the date of delivery to or collection by the Buyer or on behalf of the Buyer, the Seller shall be entitled at its discretion to make good the difference or to credit the Buyer a proportion of the relevant invoice amount, but the Seller shall have no further liability to the Buyer and the Buyer shall not be entitled to reject the Goods or any part thereof by reason of such short delivery. For the avoidance of doubt, in relation to this Clause the

Buyer shall not be entitled to make a claim or reject the Goods if the short delivery involves up to (and including) 5% more or less than the quantity of the Goods ordered.

- 9.8 Any claim by the Buyer in respect of non-delivery of Goods must be notified to the Seller in Writing within 10 days of the date of the Seller's invoice in respect of the Goods in question. If the Buyer does not notify the Seller in accordance with this Clause 9.8 the Seller shall (without prejudice to its obligation to deliver the Goods within a reasonable time deemed fit by the Seller) have no liability whatsoever for such failure, and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract, save in cases where the Seller wrongfully neglects or refuses to deliver the Goods to the Buyer.
- 9.9 Where a valid claim in respect of non-delivery is notified in accordance with the provisions of Clause 9.8, the Seller may at its absolute discretion (a) deliver a replacement consignment of Goods or (b) issue the Buyer with a credit note in respect of the invoice. In the case of replacement, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the Price of the Goods. Other than provided herein, the Seller shall have no further liability of whatsoever to the Buyer in case of a non-delivery.
- 9.10 Other than set out in Clauses 9.5 – 9.9, in no event will the Seller be liable to the Buyer for any:
- 9.10.1 claim or damage arising out of or in connection with the supply of the Goods or the Contract; or
- 9.10.2 indirect or consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damages, punitive damages in connection with or arising out of the Contract and the supply of the Goods even if advised of the possibility of such damages or if such loss ought reasonably to have been in the contemplation of both parties at the date of the Contract.
- 9.11 No statement or recommendation made or advice, supervision or assistance given by the Seller, its employees, agents, transport contractors or representatives whether oral or written shall be construed as or constitutes a warranty or representation by the Seller or a waiver of any clause in the Contract. The Seller is not liable for loss or damage arising directly or indirectly from any act or omission to act arising directly or indirectly from any such statements, recommendations, advice, supervision or assistance.

10 FORCE MAJEURE

- 10.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, in relation to the Goods, if the delay or failure was due to any cause or circumstance beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes and circumstances beyond the Seller's reasonable control (each, a "Force Majeure Event"):
- 10.1.1 act of god, explosion, severe weather conditions, flood, tempest, pandemic, fire or accident;
- 10.1.2 war or threat of war, terrorism, sabotage, interaction, civil disturbance or accident;
- 10.1.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 10.1.4 import or export regulations or embargoes;
- 10.1.5 strikes, lock-outs or other industrial action or trade disputes (whether involving employees of the Seller or of a third party);
- 10.1.6 difficulties in obtaining raw materials, labour, fuel, parts of machinery;
- 10.1.7 delays in transport or power failure or breakdown in machinery; and
- 10.1.8 non-performance by third parties.
- 10.2 Upon the occurrence of any Force Majeure Event, the Seller may at its option:
- 10.2.1 extend the quoted or agreed delivery date or deliver part the Goods or suspend delivery while such Force Majeure Event continues; or
- 10.2.2 terminate the Contract with immediate effect by written notice to the Buyer and the Seller shall not be liable for any loss or damage suffered by the Buyer as a result thereof, without prejudice to the Seller's rights to demand for any money outstanding from the Buyer for transactions or event prior to the occurrence of the Force Majeure Event.

11 SAFETY AND HEALTH

- 11.1 It shall be the responsibility of the Buyer to take all necessary precautions and to comply with the applicable laws and regulations (including the Occupational Safety and Health Act 1994 and any regulations enacted thereunder) for the safety and health of all persons handling or using the Goods. The Seller shall be under no obligation or liability whatsoever in this regard, and the Buyer shall keep the Seller indemnified against any claims, liability, damages, costs and expenses arising in respect of a failure on the part of the Buyer to take such precautions or to comply with the applicable laws and regulations.

12 INDEMNITY

- 12.1 The Buyer will indemnify and keep indemnified the Seller against all or any claims, actions, proceedings, and demands together with all costs, interest and other expenses (including fines, penalties, legal and other professional fees) incurred directly or indirectly in connection therewith in respect of:
- 12.1.1 all or any infringements or alleged infringements of any intellectual property rights or other like claim whether in respect of a registered right or not, resulting from the Seller's compliance with the Buyer's express or implied instructions;
- 12.1.2 a failure by the Buyer to observe any of these Conditions (whether material or otherwise capable of being remedied);
- 12.1.3 a failure by the Buyer to observe any of the Seller's instructions (whether oral or in Writing) relating in anyway whatsoever to the Goods; or
- 12.1.4 the occurrence of any Event of Default set out in Clause 13.

This Clause 12 shall survive termination of the Contract by the Seller pursuant to Clause 13.

13 DEFAULT OF BUYER

- 13.1 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if:
- 13.1.1 the Buyer breaches any of these Conditions (whether material or otherwise capable of being remedied);
- 13.1.2 the Buyer fails to pay the Seller in full any monies due under the Contract by the date payment falls due or if any of the instrument(s) of payment submitted by the Buyer for payment (e.g. cheques) is not honoured on occasion or repeated occasions by the relevant bank or financial institution;
- 13.1.3 the Buyer being a body corporate,
- (a) is declared or becomes insolvent;
- (b) is deemed unable to pay its debts under Section 466 of the Companies Act;
- (c) is the subject of any action taken for or with a view to its winding up (whether compulsory or voluntary);
- (d) has an encumbrancer take possession of, or a trustee, nominee, liquidator, receiver, receiver and manager, judicial manager, administrator or other similar officer is appointed in respect of the whole or substantial part of the Buyer's business, assets or undertakings;
- (e) enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency;
- (f) proposes a scheme of compromise or arrangement with all or any of its creditors under Section 366 of the Companies Act or applies for or obtains a restraining order on any term under Section 368 of the Companies Act; or
- (g) has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances; (each, an "Insolvency Event")
- 13.1.4 the Buyer being an individual,
- (a) is declared or becomes bankrupt;
- (b) commits an act of bankruptcy under Section 3 of the Insolvency Act 1967;
- (c) is the subject of an action taken for or with a view to adjudicating him bankrupt;
- (d) enters into any composition or arrangement with his creditors with a view to avoiding or in expectation of bankruptcy;
- (e) has an encumbrancer take possession of, or a trustee, nominee, liquidator, receiver, receiver and manager, judicial manager, administrator or other similar officer is appointed in respect of the whole or substantial part of the Buyer's assets or undertakings; or
- (f) threatens to do any of these things or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application or the giving of any notice) by him or any other person in respect of any of these circumstances; (each, also an "Insolvency Event")
- 13.1.5 the Buyer being a partnership, has a partner to whom any Insolvency Event applies; or
- 13.1.6 the Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business. (each, an "Event of Default").
- 13.2 If this Clause 13 applies then, without prejudice to or any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract and/or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered or deemed delivered under Clause 6.1 but not paid for the Price and such other amount due and owing shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 CONSEQUENTIAL LOSS

- 14.1 Nothing in these Conditions shall exclude either party's liability for death or personal injury arising from its negligence or for fraud.
- 14.2 Subject to Clause 14.1, the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for any indirect, special, consequential or pure economic loss or damage; any loss of profits, anticipated profits, revenue or business opportunities; or damage to goodwill (in each case arising as a direct or indirect result of the relevant claim).
- 14.3 Subject to Clause 14.1, the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price.

15 EXPORT TERMS

- 15.1 Where the Goods are supplied for export from Malaysia, the provisions of this Clause 15 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 15.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 15.3 The Buyer shall satisfy itself that the Goods do, and the Seller shall accept no liability in the event that the Goods do not conform with the laws and regulations of the country to which the Goods are being exported.
- 15.4 For the purposes of Clause 15:
- all Goods are sold on an ex-works basis and delivery occurs when the Goods are placed at the disposal of the Buyer (including its nominee or agent) at the Seller's premises; and
 - notwithstanding Clause 15.4(a), the Seller and the Buyer may otherwise agree in Writing for the Goods to be delivered F.C.A. the air or sea port of shipment and in this case the Seller shall be under no obligation to give notice under Section 39(3) of the Sale of Goods Act 1957.
- 15.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on reasonable inspection and which is made after shipment, or in respect of any damage during or after transit.
- 15.6 If the Buyer is required by law to withhold any taxes, duties or other charges, levies or amounts ("Withholding Tax"), then (i) the Buyer will promptly so notify the Seller, and (ii) the Buyer shall pay as additional price or fees such additional amount as shall result in the Seller receiving, net of any Withholding Tax, the amount the Seller would have otherwise received pursuant to the Contract or pursuant to an invoice from the Seller, as if no such Withholding Tax had been imposed or had been required to be withheld.
- 15.7 Without prejudice to Clause 8.1 and notwithstanding the provisions of Clause 8 and other provision of this Clause 15, the risk in Goods to be exported shall pass to the Buyer forthwith upon such Goods leaving the Seller's premises.

16 REPRESENTATIONS

- 16.1 No date, description, information, warranty condition or recommendation contained in any catalogue, price list, advertisement, or other written communication or made orally by any officer, employee or agent of the Seller shall be construed to enlarge, vary, or override in any way, any of these Conditions.
- 16.2 These Conditions exclude and supersede all prior discussions, representations, arrangements and any other written or oral terms and conditions whether or not they are endorsed on, delivered with or referred to in any purchase order, or other document delivered by the Buyer to the Seller.
- 16.3 In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any representations, arrangements and any other written or oral terms and conditions unless expressly made in Writing by an authorised representative of the Seller.
- 16.4 The Buyer shall not represent to any customer/ consumer that the customer/ consumer has, or can accede to the warranties provided to the Buyer in Clause 9.
- 16.5 The Buyer irrevocably indemnifies and holds the Seller, its officers, employees and contractors harmless against any actions, claims, losses, damages, exemplary damages, punitive damages and civil penalties arising out of, or in connection with a product warranty claim, as a result of the Buyer, its officers, employees, contractors, sub-contractors or authorised representatives' failure to comply with this Clause 16.

17 TERMINATION

- 17.1 Save as otherwise provided in these Conditions, the Contract may not be terminated or cancelled except by agreement in Writing of both the Buyer and the Seller and upon payment by the Buyer to the Seller of such amounts as may be necessary to indemnify the Seller against all reasonable loss resulting thereof.

18 PERSONAL DATA

- 18.1 In connection with and to the extent necessary in order to establish, perform or terminate the Contract with the Buyer, the Seller stores and processes personal data and may share it with companies or entities affiliated with the Seller (whether located within or outside Malaysia).
- 18.2 The Buyer hereby agrees and consents to the storage and processing of its personal data (as defined in the Personal Data Protection Act 2010) by the Seller for the purposes set out in Clause 18.1. If any personal data provided to the Seller does not belong to the Buyer but to its officer, employee or authorised representative, the Buyer hereby warrants that such officer, employee or authorised representative agrees and consents for his personal data to be processed by the Seller.

19 CONFIDENTIALITY

- 19.1 All technical or commercial know-how, specifications, prices, inventions, processes, initiatives and any other information concerning the Seller's business, its products and services which are of a confidential nature provided to the Buyer shall not at any time, directly or indirectly, be made accessible to third parties, duplicated or used for any purposes other than those which have been agreed to without the prior written consent of the Seller.
- 19.2 Information provided to the Seller in connection with orders shall not be considered confidential unless the confidentiality is obvious or has been expressly stated as such by the Buyer.

20 GENERAL

- 20.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 20.2 To the extent permissible by law, save for a Subsidiary or Holding Company of the Seller, no one other than a party to the Contract shall have any right to enforce any of its terms.
- 20.3 No variations to these Conditions shall be binding unless expressly agreed in Writing between the Buyer and the Seller or their authorised representatives.
- 20.4 No waiver by the Seller of any breach of these Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 20.5 In the event of any inconsistency between the provisions of these Conditions and any terms and conditions (oral or written) whether or not they are endorsed on, delivered with or referred to in any purchase order, or other document delivered by the Buyer to the Seller, the provisions of these Conditions shall prevail, unless otherwise expressly agreed between the Buyer and the Seller in writing.
- 20.6 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Conditions without the consent of the Buyer.
- 20.7 The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under these Conditions without the prior written consent of the Seller.
- 20.8 Where applicable, stamp duty(ies) (including penalties) of the Contract and/or such other document entered into by the Seller and the Buyer in connection with the Contract shall be borne by the Buyer.
- 20.9 Any matter not provided for in these Conditions or any doubt which may arise as to interpretation of these Conditions shall be settled through mutual discussion between the parties hereto in good faith.
- 20.10 If any provision of these Conditions is held by any Court to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 20.11 These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Malaysia.
- 20.12 Each party irrevocably agrees that the courts of Malaysia shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims).
- 20.13 The United Nations Convention on Contracts for the International Sale of Goods, 1980 (the Vienna Convention) shall not apply to the Contract.
- 20.14 The Contract shall be binding upon the heirs, authorised representatives, successors-in-title and permitted assigns of the Buyer and the Seller.