

**CONDITIONS OF SALE FOR AGGREGATES AND COATED MATERIALS - TARMAC LIMITED****1. INTERPRETATION**

1.1 In these Conditions:

**“Buyer”** means the person or company whose order for the Goods is accepted by the Seller;

**“Carrier”** means any person who in a contract of carriage undertakes to perform or procure the carriage of the Goods to the Buyer and any employee, agent or contractor of that person;

**“Conditions”** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

**“Containers”** means returnable tubs, pallets, and any other products used for the containment, protection, handling, delivery and presentation of the Goods;

**“Contract”** means the contract between the Seller and the Buyer for the sale and purchase of the Goods provided that a **“Scottish Contract”** shall mean a Contract under which the Seller supplies Goods from premises in Scotland, and an **“English Contract”** shall mean any Contract other than a Scottish Contract;

**“Goods”** means the goods (including any instalment delivery of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions;

**“Seller”** means Tarmac Limited.

**2. BASIS OF THE SALE**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions which shall govern the Contract to the exclusion of any other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).

2.2 Each order for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions, and, for the avoidance of doubt, any call-off order on a Contract which differs from the mix designs negotiated for that Contract shall, to the extent accepted by the Seller in accordance with Condition 3.1, be deemed to be part of the Contract and subject to these Conditions.

2.3 Any quotation is given on the basis that no Contract will come into existence until the Seller accepts the order in accordance with Condition 3.1.

Any quotation is valid for a period of 30 days only from its date provided that the Seller has not previously withdrawn it.

2.4 The Seller's catalogues, instruction leaflets, manuals, drawings, illustrations, specifications, quotations and price lists do not constitute offers by the Seller and the Seller reserves the right to withdraw the same at any time prior to acceptance of an order.

2.5 No terms or conditions endorsed upon, delivered with, or contained in the Buyer's purchase order, specification or similar document will form part of the Contract simply as a result of a reference to such document in the Contract.

2.6 No variation to these Conditions shall be binding unless agreed in writing by an authorised employee of the Seller of the grade of general manager or director.

2.7 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed in writing by a director of the Seller or senior manager of the Seller who is authorised by a director of the Seller. In entering into the Contract, the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed provided always that this

Condition 2.7 does not seek to exclude liability for fraudulent misrepresentation by the Seller or its employees or agents.

2.8 Save where otherwise agreed in writing between the parties, any recommendation or suggestion relating to the use, storage or handling of the Goods made by the Seller either in sales and technical literature or in response to a specific enquiry or otherwise is given in good faith but it is for the Buyer to satisfy itself of the suitability of the Goods for its own particular purposes. All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.

2.9 The Seller reserves the right to record all orders and enquiries received by telephone.

### 3. ORDERS, SPECIFICATIONS, SAMPLING AND TESTING

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller until the earlier of an acknowledgement of order being despatched to the Buyer, or the Goods being delivered to the Buyer.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation forming part of these Conditions or the Buyer's order (if accepted by the Seller in accordance with these Conditions).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss in connection with any claim for infringement of any patent, copyright, design or trademark, or other intellectual property rights which result from the Seller's use of the Buyer's specification.

### 3.5 THE ATTENTION OF THE BUYER IS SPECIFICALLY DRAWN TO THE NEED FOR CARE IN THE HANDLING OF THE

GOODS. In particular the attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety at Work etc. Act 1974, as amended. The Seller gives notice to the Buyer that the Seller has available information, (including product safety data sheets) and product literature concerning the conditions necessary to ensure that, as far as is reasonably practicable, the Goods supplied will be safe and without risks to health when properly used, handled, processed, stored or transported by a person at work. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods at work the Buyer should immediately contact the Seller.

3.6 All sampling of the Goods, the making and testing of samples and interpretation of results must be carried out in accordance with the relevant provisions of the current edition of BS 812 (aggregates) or BS 598 (bituminous materials), as such standards are amended or replaced from time to time or, in accordance with the relevant provisions of such other appropriate British and European Standards (as notified by the Seller to the Buyer) or other specification (and in the absence of any appropriate specification, in accordance with the Seller's instructions).

### 4. DELIVERY

4.1 The parties shall agree the location for delivery of the Goods. Failing agreement delivery of the Goods shall be at the Seller's premises.

4.2 Where delivery of the Goods is to take place at the Seller's premises:-

4.2.1 delivery of the Goods shall take place within 7 days (other than Saturday, Sunday or a bank holiday) after the Seller notifies the Buyer that the Goods are ready for collection;

4.2.2 the Goods will be delivered into the vehicle in which the Buyer, its employees, agents or sub-contractors collect the Goods, at a suitable delivery point at the Seller's premises as directed by the Seller's duly authorised representative;

4.2.3 whilst at the Seller's premises the Buyer, its employees, agents and sub-contractors must obey the Seller's site rules and the instructions of the Seller's duly authorised representative; and

4.2.4 the Buyer will be responsible for the condition of the vehicle in which it, its employees, agents or sub-contractors collect the Goods (whether owned or hired) and the Seller shall not be liable in any way (including, without limitation, for negligence) for loss or contamination of the Goods resulting from the condition of such vehicle. The Buyer shall indemnify the Seller for any loss, damage or injury to the Seller, its employees or agents or sub-contractors, its plant and equipment caused by the Buyer, its employees or agents or sub-contractors, the Buyer's vehicle, or that of its agent or sub-contractor, or the condition thereof.

4.3 Where the Goods are to be delivered at the Buyer's premises or to such other place as may be agreed between the Seller and the Buyer pursuant to Condition 4.1, in the case of road deliveries, the Buyer shall provide and shall clearly indicate to the Seller or Carrier a route between the metalled highway and the point at which the Buyer wishes the Goods to be discharged which, in the reasonable opinion of the Seller or such Carrier, is safe and proper and reasonable for access, manoeuvring and egress of the delivery vehicle and, in the case of rail deliveries, the Buyer shall provide suitable rail sidings and discharge points and access by rail to the same. IF, IN THE SELLER'S OR CARRIER'S REASONABLE OPINION, SUCH ACCESS IS NOT AVAILABLE OR IS UNSUITABLE, THE SELLER RESERVES THE RIGHT TO REFUSE TO DELIVER. The Buyer shall be responsible for supervising completion of delivery. The Buyer indemnifies the Seller (both for itself and as agent and trustee for any Carrier) against all losses, costs, proceedings, claims, demands and expenses incurred by it or by any such Carrier (other than in respect of death or personal injury caused by (in the case of an English Contract) the negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of the Unfair Contract Terms Act 1977 (as amended) ("UCTA")) of the Seller or Carrier) as a result of failure to provide such convenient and safe access, rail sidings or discharge point and/or properly supervised delivery as aforesaid.

4.4 Any time, period or date for delivery stated in the Contract is an estimate only and the Seller shall not be liable for any damages or losses (including as a result of negligence) arising out of failure to meet such time, period or date.

4.5 Where the Goods are to be delivered in instalments a failure by the Seller to deliver any one or more (but not all) of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more (but not all) instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4.6 The Buyer must satisfy itself as to the condition of the Goods at the time of delivery and the Goods must be inspected and accepted in writing by the Buyer or Buyer's representative at the time of delivery. In the case of rail deliveries, the Buyer may only reject Goods if it does so in accordance with these Conditions and in relation to not less than the entire contents of any one rail wagon.

4.7 The Seller's liability in respect of short weight or measures of Goods supplied shall be limited to the delivery of an additional supply of the

Goods in accordance with these Conditions to make up the short weight or measure. The Seller shall have no liability in respect of the short weight or measure if notification is given later than 24 hours after delivery of the Goods.

4.8 The Buyer shall reimburse the Seller (both for itself and as agent and trustee for any Carrier) all costs and expenses incurred by the Seller as a result of the Seller or Carrier being prevented from or delayed in making any delivery resulting from the acts or omissions of the Buyer or any of its employees, agents or sub-contractors.

4.9.1 the Buyer requires delivery of the Goods in quantities less than minimum loads, as such minimum loads may be notified to the Buyer by the Seller from time to time, or delivery of several types of Goods on one vehicle; or

4.9.2 the Buyer requires delivery outside the Seller's normal working hours; or

4.9.3 the Buyer fails to take delivery or fails to give the Seller adequate delivery instructions; or

4.9.4 unloading of the delivery vehicle or rail wagon (as appropriate) is delayed, more than 30 minutes after the Seller or Carrier is ready to unload; or

4.9.5 delivery cannot be effected because of unsuitable access (whether by road or rail) or unsuitable discharge point; or

4.9.6 the Buyer requests that delivery be deferred.

4.10 Save where otherwise agreed in writing by the Seller, the Buyer may not re-direct delivery of the Goods or of any instalment of the Goods.

4.11 In the event that the Buyer requests that any Goods be deposited on a street, public highway and/or public footpath the Buyer shall be responsible for compliance with all statutes and regulations relating to public highways and byeways including, without limitation, obtaining all necessary licences and/or orders, and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Seller in respect of all costs, claims, losses or expenses (including legal costs) on an indemnity basis (other than in respect of death and personal injury caused by (in the case of an English Contract) the negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of UCTA) of the Seller or its Carrier) which the Seller may incur as result of a breach of this Condition 4.11 by the Buyer.

4.12 In the case of supplies by rail, the Buyer shall co-operate with the Seller and assist the Seller as may be reasonably required, in respect of scheduling haulage by rail.

4.13 In the case of supplies by rail, the Buyer shall ensure that rail wagons are properly unloaded at the discharge point specified by the Buyer in accordance with Condition 4.3 and that the locomotive and rail wagons are not damaged in unloading. If unloading of a rail wagon is delayed beyond the time specified in Condition 4.9.4, or is prevented, either totally or partially, from unloading at the discharge point by any reason arising out of or in connection with an act or omission of the Buyer, its employees, agents, or sub-contractors, the Seller may require the return of the rail wagon to its premises and in such event the Buyer shall reimburse the Seller any additional costs and expenses reasonably and

4.9 Without prejudice to any other rights or remedies available to the Seller an additional charge may be made if:

properly incurred by the Seller in returning such rail wagon to its premises and shall pay a further charge (as notified by the Seller to the Buyer from time to time) in respect of each period of 24 hours during which the rail wagon is unavailable for other use by the Seller.

4.14 The Buyer irrevocably and unconditionally indemnifies and keeps indemnified the Seller against all losses, costs (including legal costs), expenses, claims, demands, penalties and damages (other than in respect of death or personal injury caused by (in the case of an English Contract) the

negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of UCTA) of the Seller, its employees, agents or subcontractors) which the Seller incurs as a result of any damage to a rail wagon arising out of or in connection with any act, neglect or default (including negligence) by the Buyer, its employees, agents or sub-contractors.

4.15 In the event that the Seller has agreed that delivery of the Goods shall be by rail and such delivery is not possible (for whatever reason) the Seller may deliver the Goods by road and the Buyer shall comply with the provisions of these Conditions in relation to delivery by road.

4.16 If the Buyer cancels or postpones its order, the Seller shall be entitled to recover all costs accrued and/or incurred up to the date upon which the Seller receives notice of such cancellation.

## 5. PRICE OF THE GOODS

5.1 The price of the Goods shall be the price quoted by the Seller. Where no price has been quoted by the Seller, deliveries will be made at the Seller's prices ruling at the date of delivery or collection (as appropriate). Subject to price increases in the interim period, where additional mixes are ordered by the Buyer and accepted by the Seller in accordance with these Conditions, the price of the Goods shall be calculated pro-rata against the original main mix price as quoted in accordance with this Condition 5.1.

5.2 The price of the Goods shall be subject to the addition of VAT and a sum equal to any other government duty, tax or levy applicable to the Goods, any ingredient of the Goods or applicable to the sale of the Goods. Except where delivery takes place at the Seller's premises, all prices quoted by the Seller include the Seller's charges for transport and insurance.

## 6. TERMS OF PAYMENT

6.1 Payment is due before delivery if required by the Seller at the time of entering into the Contract. In all other cases, payment shall be made within 28 days following the end of the month of invoice, but if default is made in the payment of any one invoice, these credit terms shall cease to apply and the Buyer will become immediately liable for all sums outstanding.

6.2 Where the Seller has not required payment before delivery in accordance with Condition 6.1 and the Buyer fails to collect or accept delivery of the Goods (as appropriate) in accordance with these Conditions the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after such failure to collect or accept delivery (as appropriate).

6.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

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

6.3.2 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time until payment in full is made.

6.4 The Buyer shall not be entitled to make any deduction from, set-off, or retention of, the amounts due under the Contract unless the Buyer has a valid court order requiring an amount equal to such deduction, set-off or retention to be paid by the Seller to the Buyer. The Seller shall be entitled to appropriate any payment made by the Buyer to the Seller to such of the Goods as the Seller thinks fit despite any purported appropriation by the Buyer including, but not limited to, any goods which have been supplied by the Seller to the Buyer under any contract between the Seller and the Buyer.

## 7. RISK AND PROPERTY

7.1 Title in the Goods shall not pass to the Buyer until the price of the Goods and every other sum due from the Buyer to the Seller (whether under

the Contract or otherwise) has been paid in full and until such payment, the Seller shall be entitled to enter the Buyer's premises to recover the Goods.

7.2 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.2.1 in the case of Goods to be delivered at the Seller's premises, at the moment of discharge at the delivery point on the Seller's premises into or onto

the vehicle in which the Buyer, its employees, agents or sub-contractors collect the Goods; or

7.2.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the moment of their discharge from the Seller's or Carrier's vehicle

or rail wagons (as appropriate) at the delivery point identified by the Buyer in accordance with these Conditions.

## 8. THE GUARANTEE

8.1 If the Buyer can establish to the reasonable satisfaction of the Seller that:-

8.1.1 there is a defect in the workmanship of the Seller in relation to the Goods; or

8.1.2 there is a defect in the design of the Goods in circumstances where the Seller has designed the Goods; or

8.1.3 the Goods are not in accordance with the quality or specification contained in the Contract; or

8.1.4 there is some other failure by the Seller in relation to the Goods to comply with the Contract, then, subject to the remaining provisions of this Condition 8 and Condition 9, the Seller shall at its sole discretion supply to the Buyer additional

goods in the same quantity as the defective or non-compliant Goods and which in all respects are in accordance with the Contract or refund all

or part (as appropriate) of the price of the relevant Goods (the "Guarantee").

8.2 The Guarantee is subject to the following limitations:

8.2.1 the Guarantee shall not apply unless the Buyer notifies the Seller in writing of the alleged defect or failure immediately upon its first becoming

aware thereof and in any event within 28 days of the date of delivery of the Goods or, where the defect or failure was not apparent on reasonable

inspection, within 28 days after the earlier of the discovery of the defect or failure by the Buyer, its employees, agents or sub-contractors or the

time when the defect or failure ought reasonably to have been discovered by the Buyer, its employees, agents or sub-contractors;

8.2.2 in relation to coated materials, the Seller will accept no responsibility for the strength or other quality of its Goods if the Buyer shall have added

anything whatsoever to them (other than as directed by the Seller);

8.2.3 the Seller will accept no responsibility for faults in or failure of the Goods due to placing adopted by the Buyer, or the effects of frost, heat or

inclement weather;

8.2.4 if the materials used in the production of the Goods contain naturally occurring inclusions which result in cosmetic blemishes or surface

depressions no liability for such blemishes or depressions can be accepted by the Seller unless the Buyer has expressly indicated that it requires

Goods without cosmetic blemishes or surface depressions for use in connection with a specific purpose and the Seller has accepted this in writing;

8.2.5 the Seller will accept no responsibility if the defect or failure in respect of the Goods results from incorrect specification or other data supplied

by the Buyer to the Seller;

8.3 The Buyer shall provide to the Seller, its employees and agents (together with such vehicles, plant and equipment as the Seller shall deem

necessary) safe and unrestricted access together with such other facilities and information as the Seller may reasonably require to enable it to

ascertain or verify the nature and cause of the alleged defect or failure and to carry out its obligations under the Guarantee. PROVIDED

ALWAYS THAT the Seller shall be under no obligation whatsoever to refund the price of, or supply any additional goods in respect of, any Goods which are removed by the Buyer without the Seller's prior written consent or where the Seller has not been given proper opportunity to ascertain or verify the nature and cause of the alleged defect in accordance with this Condition 8.3.

8.4 The Seller shall be entitled to require the Buyer by notice in writing to cease forthwith the use of any of the Goods in respect of which any alleged defect or failure has been notified to the Seller and if the Buyer fails to comply with such requirement the Seller shall be under no liability to the Buyer either under this Condition or otherwise in relation to such Goods. Notwithstanding this, the Seller shall not be liable for any damages or losses whatsoever suffered by the Buyer to the extent that they are caused by the continued use of the Goods after a defect or failure became apparent, or ought to have become apparent, to the Buyer, its employees, agents or sub-contractors.

8.5 The Seller shall be under no obligation whatsoever to refund the price of the Goods or supply any additional goods to the Buyer pursuant to the Guarantee where the alleged defect or failure results from incorrect installation or handling, alteration without consent, wear and tear, accident, failure to observe the sampling or testing procedures referred to in Conditions 3, abnormal or improper conditions of storage or use or any act, neglect or default (including negligence) of the Buyer or any third party.

8.6 Subject to Conditions 8.1 to 8.5, additional goods supplied pursuant to the Guarantee shall be delivered to the Buyer at the address at which the defective Goods were located.

## 9. THE SELLER'S LIABILITY

### 9.1 SUBJECT TO CONDITION 9.2:-

9.1.1 THE LIABILITY ACCEPTED BY THE SELLER UNDER THE GUARANTEE SHALL BE IN SUBSTITUTION OF ANY OTHER LEGAL REMEDY OF THE BUYER IN RESPECT OF ANY ALLEGED DEFECT IN RELATION TO THE GOODS OR FAILURE OF THE GOODS TO COMPLY WITH THE SPECIFICATION OR QUALITY CONTAINED IN THE CONTRACT AND ANY OTHER CONDITION, WARRANTY, REPRESENTATION OR UNDERTAKING ON THE PART OF THE SELLER AS TO THE QUALITY OF THE GOODS OR THEIR FITNESS OR SUITABILITY FOR ANY PURPOSE HOWSOEVER AND WHENEVER EXPRESSED WHICH MAY BE IMPLIED BY STATUTE CUSTOM OF THE TRADE OR OTHERWISE IS HEREBY EXCLUDED AND THE PROVISIONS OF SECTIONS 13 TO 15 INCLUSIVE OF THE SALE OF GOODS ACT 1979 (AS AMENDED) SHALL NOT APPLY TO THE CONTRACT;

9.1.2 THE LIABILITY OF THE SELLER WHETHER IN CONTRACT OR IN TORT OR DELICT ARISING OUT OF OR IN **CONNECTION WITH ANY ACT, OMISSION, NEGLIGENCE OR DEFAULT OF THE SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS** IN CONNECTION WITH THE CONTRACT (INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING FOR NEGLIGENCE, BREACH OF ANY CONDITION OR WARRANTY WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE HOWSOEVER) SHALL BE LIMITED TO THE REFUND OF THE PRICE OF THE GOODS OR THE SUPPLY OF ADDITIONAL GOODS PURSUANT TO THE GUARANTEE;

9.1.3 THE SELLER SHALL NOT BE LIABLE TO THE BUYER IN CONTRACT, TORT OR DELICT (INCLUDING NEGLIGENCE) OR

FOR BREACH OF STATUTORY DUTY FOR ANY LOSS OF PROFIT, LOSS OF INCOME, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, LOSS OF OPPORTUNITY OR LOSSES CALCULATED BY REFERENCE TO PROFITS, INCOME, BUSINESS, REVENUE, GOODWILL, ANTICIPATED SAVINGS, DATA OR OPPORTUNITY (IN ALL CASES WHETHER DIRECT OR INDIRECT) OR ANY INDIRECT, CONSEQUENTIAL OR ECONOMIC LOSS OF ANY KIND WHATSOEVER WHICH THE BUYER MAY SUFFER OR INCUR BY REASON OF ANY ACT, OMISSION, NEGLIGENCE OR DEFAULT (INCLUDING NEGLIGENCE) IN CONNECTION WITH THE CONTRACT BY THE SELLER, ITS EMPLOYEES OR AGENTS.

9.2 NOTHING IN THESE CONDITIONS SHALL:

9.2.1 LIMIT OR EXCLUDE THE LIABILITY OF THE SELLER FOR DEATH OR PERSONAL INJURY RESULTING FROM (IN THE CASE OF AN ENGLISH CONTRACT) THE NEGLIGENCE OR (IN THE CASE OF A SCOTTISH CONTRACT) BREACH OF DUTY (AS DEFINED IN SECTION 25 OF UCTA) OF THE SELLER, ITS EMPLOYEES OR AGENTS;

9.2.2 LIMIT OR EXCLUDE THE LIABILITY OF THE SELLER FOR FRAUDULENT MISREPRESENTATION; OR

9.2.3 EXCLUDE THE CONDITIONS AND WARRANTIES IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979 (AS AMENDED).

9.3 The Seller shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract (subject to Condition 9.2) because of any delay in performing or any failure to perform any of the Seller's obligations under the Contract if the delay or failure was due to any cause beyond the Seller's reasonable control ("force majeure condition").

9.4 Without prejudice to the generality of Condition 9.3 force majeure conditions shall include: governmental actions, war or threat of war, national emergency, riot, civil disturbance, malicious damage, sabotage, insurrection or requisition; act of God, fire, explosion, flood, tempest, epidemic or accident; import or export regulations or embargoes or compliance with any governmental, parliamentary or local authority order, rule, regulation, direction or bye-law; strikes, lock outs or other industrial actions or trade or labour disputes (including actions or disputes involving the Seller's workforce); inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, parts, machinery or labour; or power failure or breakdown in machinery, including but without limitation, failure of railways, track or rail wagons.

9.5 The Seller undertakes to make every reasonable endeavour to overcome difficulties arising from a force majeure condition provided always that the Seller shall not be obliged to purchase the Goods from third parties.

## 10. INSOLVENCY AND BREACH OF CONTRACT OF BUYER

10.1 This Condition applies if the Buyer commits any breach of the Contract or of any other contract between the Buyer and the Seller or between the Buyer and any company within the same group of companies of which the Seller is a member; or the Buyer has a bankruptcy order made against him or makes any voluntary arrangement or composition with his creditors or otherwise takes the benefit of any statute for the time being in

force for the relief of insolvent debtors (or being a company or body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of a reconstruction or

amalgamation, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or an encumbrancer takes possession or a manager, administrator, receiver or administrative receiver is appointed over any of the property, undertaking or assets of the Buyer (or part thereof); or the Buyer ceases or threatens to cease to carry on business; or if any distraint, lien, hypothec, execution (whether legal or equitable) or other process is levied or enforced on any property of the Buyer and is not paid out, withdrawn or discharged within 21 days; or the Buyer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986: or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable despite any previous agreement or arrangement to the contrary.

#### 11. CONTAINERS

11.1 The Buyer shall pay a deposit in respect of each Container, as specified by the Seller from time to time. Containers remain the property of the Seller at all times. The Buyer must return them or make them available for return as soon as possible to the place indicated by the Seller.

11.2 Unless agreed otherwise all Containers and rail wagons shall be returned or made available for return (as specified by the Seller), by the Buyer empty, securely closed, free from any residual materials, substances, products or other waste and in good order. The Buyer shall indemnify the Seller against all costs, claims, losses or expenses (including legal expenses) on an indemnity basis (other than in respect of death or personal injury caused by (in the case of an English Contract) the negligence or (in the case of a Scottish Contract) breach of duty (as defined in Section 25 of UCTA) of the Seller or its Carrier) which the Seller may incur as a result of a breach of this Condition 11.2.

11.3 Where Containers are not returned or not returned in good order the Seller shall be entitled to make a charge for damage or loss equal to the repair or replacement cost (as appropriate) of such Containers.

11.4 Where Containers are not returned or made available for return within 30 days of the date of delivery the Seller shall be entitled to enter the Buyer's premises to locate and recover Containers and the Buyer grants the Seller a licence for such purposes and agrees to indemnify the Seller in respect of the Seller's costs of locating and recovering such Containers.

#### 12. GENERAL

12.1 All notices between the parties in respect of the Contract must be in writing and delivered by hand, sent by first class pre-paid post, sent by facsimile transmission or sent by e-mail (in the case of notices to the Seller) to the Seller's address, facsimile number or e-mail address shown overleaf or as notified in writing by the Seller from time to time or (in the case of notices to the Buyer) to its registered office (if it is a company) or (in any other case) to the last known address of the Buyer or such address, facsimile number or e-mail address as shall be notified in writing to the Seller by the Buyer for this purpose.

12.2 Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by first class post; on the day of delivery, if delivered by hand; or at the time of transmission, if sent by facsimile or by e-mail, provided that a confirming copy is sent by first class pre-paid post to the other party within 24 hours after transmission.

12.3 No waiver by the Seller of any breach of any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.4 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.

12.5 English Contracts shall be governed by the laws of England and Wales. Scottish Contracts shall be governed by the laws of Scotland. The parties agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute which arises in connection with the Contract.

12.6 The Buyer shall not assign, sub-contract or otherwise transfer all or any of its rights, interests or obligations under the Contract without the prior written consent of the Seller. Any or all of the Seller's rights or obligations under the Contract may be assigned or sub-contracted by the Seller.

12.7 The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it (in the case of an English Contract) or create a ius quaesitum tertio in any person (in the case of a Scottish Contract).

Version 1.0

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