

VDG Trading GmbH - General Terms and Conditions

1 DEFINITIONS

“**Buyer**” means the Party who agrees to buy one or more of the Products; it includes any Receiving Party nominated by the Buyer;

“**Collect**” means the moment when the Buyer is obliged to take Delivery of the Products as specified in the Contract. „Collection“, „Collected“ or any other derivative of „Collect“, in the appropriate context, shall have the same meaning as „Collect“.

“**Contract**” means collectively (i) the Individual Terms, (ii) the Contract Confirmation, and (iii) these General Terms and Conditions;

“**Contract Confirmation**” means the written document, sent by VdG Trading GmbH, (hereinafter “VDG”) to the Buyer, confirming the agreement reached between the Parties in respect of any Contract;

“**Delivery**” means the moment when VDG delivers Products in accordance with the Contract;

“**Delivery Period**” means the period agreed in the Contract during which VDG is obliged to deliver and the Buyer is obliged to Collect the Products;

“**General Terms and Conditions**” (“**GTCs**”) means these General Terms and Conditions;

“**Incoterm(s)**” means the International Commercial Terms 2010 published by the International Chamber of Commerce;

“**Individual Terms**” means the agreement, written or oral or in any other form, between the Parties on the Products sold, the price to be paid, the Delivery Period, and any other terms of the sale not set out in the Contract Confirmation and these General Terms and Conditions;

“**Party**” or “**Parties**” means VDG or/and the Buyer;

“**Product(s)**” includes any products sold by VDG pursuant to the Contract;

“**Receiving Party**” means any third party designated by the Buyer to VDG in accordance with paragraph 5, to whom the Product is to be delivered;

“**Specifications**” means the quantitative and qualitative characteristics of the Product(s) as agreed in the Contract.

2 PRIORITY OF TERMS

In the event of discrepancy or inconsistency between terms and conditions, the following order of precedence shall apply:

(i) Contract Confirmation

(ii) Individual Terms

(iii) These General Terms and Conditions

(iv) Incoterms 2010

3 SCOPE OF APPLICATION

3.1 These General Terms and Conditions apply exclusively to, and are incorporated by reference into, **all Contracts for the sale and delivery of Products by VDG**. Any contradictory and/or supplementary general conditions of the Buyer, including but not limited to the Buyer’s terms and conditions of purchase shall not apply and are expressly excluded, even in the event that (i) VDG does not expressly object to such conditions, or (ii) if VDG fulfills its obligations unconditionally, in awareness of the contrary or variant provisions of the Buyer.

3.2 Placing an order for, or accepting delivery of, Products shall be construed as an acknowledgement and acceptance of these General Terms and Conditions. VDG’s acceptance of any offer or order from the Buyer is expressly made in reliance on Buyer’s assent to these General Terms and Conditions.

3.3 These General Terms and Conditions shall also apply to all future transactions between VDG and the Buyer, or the Buyer’s associated or subsidiary companies and affiliates.

3.4 No variation of these General Terms and Conditions shall bind VDG unless agreed in writing by an authorised representative of VDG.

4 CONCLUSION OF CONTRACT, ORDERS, SPECIFICATIONS

VDG’s price lists, advertisements and other publicity material are not binding upon VDG and are subject to change without notice at any time. Also any offer of VDG is not binding and subject to written confirmation by VDG. Counter-offers are not accepted until confirmed in written by VDG. In particular, silence

shall not be deemed agreement or acceptance and cannot be considered as recognition or approval.

Any description by VDG of any Product, whether contained in any catalogue, brochure or advertising material or made orally before a Contract is concluded, including, but not limited to, descriptions of its quality and physical characteristics is only approximate. It shall **not constitute a warranty** that the Product will have any specific quality, or particular characteristic whatsoever. Unless expressly stated by VDG, any model or sample shown to the Buyer is shown to illustrate the general quality of the Product only and shall not constitute a representation that the quality or packaging of the Product will conform to the model or sample.

5 DELIVERY

5.1 Save where otherwise stipulated in the Contract, Delivery shall be governed by the **Incoterm** agreed upon in the Contract, except as otherwise agreed.

Delivery to the Buyer of Products sold on the following trading terms –Freight Carriage Paid to (**CPT**; agreed place of destination); or Delivery at Place and Insurance Paid to (**DAP**; named place of destination) – shall be deemed to have been made by VDG at the time that the Products are unloaded at the agreed carrier or when ready for unloading at the named place of destination.

5.2 The Buyer shall be obliged to Collect the Products at the agreed time(s) and place(s). If the Buyer does not Collect the Products, and/or fails to provide VDG with the Notice of Collection, VDG shall be entitled to store the Products at the Buyer’s risk and expense, without prejudice to VDG’s right to claim compensation and/or damages.

5.3 VDG reserves the right to withhold any Delivery if a petition for bankruptcy, winding up, postponement of payments or similar judicial act is filed by or on behalf of the Buyer, or if VDG has reasonable grounds for doubting the Buyer’s ability to pay.

5.4 In the event that VDG fails to meet binding Delivery dates, upon notice, the Buyer shall grant VDG a grace period of at least thirty (30) days and may serve a written notice by registered mail that Buyer will refuse to accept Delivery of any portion of the Contract undelivered after expiration of this period.

5.5 Save where otherwise agreed in the Contract, VDG may, in its option Deliver, and the Buyer shall accept and pay for, a quantity which varies up to 5% (five percent) more or less than the quantities named in the Contract for each Product sold.

5.6 Save where otherwise expressly agreed in the Contract, the Buyer shall be responsible for all transportation and other costs incurred beyond the point of Delivery, which shall include, without limitation, all insurance, storage, loading, unloading, handling and other charges.

6 RISK OF LOSS / TIME OF THE ESSENCE

6.1 Save where otherwise provided for in the Contract, **the risk of loss or damage to the Products shall be transferred from VDG to the Buyer upon Delivery**.

6.2 Both Parties contract on the common understanding that the Products are perishable. Accordingly, should the Buyer or his nominated Receiving Party fail to Collect the Products before or at the expiry of the agreed Delivery Period, the Buyer shall bear the sole risk of loss or damage to the Products.

6.3 The Parties agree that due to the perishable nature of the Products and the logistical impact upon VDG of late Collection, time of Collection is of the essence.

7 RETENTION OF TITLE

7.1 VDG retains title to the Delivered Products until full payment of (i) all amounts due under the Contract, and (ii) all present and future claims arising out of the business relationship between VDG and the Buyer, or its associated or subsidiary companies and affiliates.

7.2 The Buyer’s failure to make payment in accordance with (i) the Contract, and/or (ii) all present and future claims arising out of the business relationship between VDG and the Buyer, or its associated or subsidiary companies and affiliates, shall (i) entitle VDG to exercise a lien over the Products or any other products due to be delivered to the Buyer or its associated or subsidiary companies and affiliates, and (ii) give VDG the right to take back Delivered Products. All costs incurred by VDG in relation to such actions shall be for the Buyer’s account.

8 PRICE

8.1 Should a price have been agreed, and there is an increase in the costs on which such prices were based, including, but not limited to, any additional levy or tax, **VDG may adjust the agreed price to reflect the increase.** Save as aforesaid, the price shall not be subject to any additional change, for whatever reason, including, but not limited to market price events, whether foreseen or unforeseen.

8.2 Unless expressly stated otherwise in the Contract, **the price excludes any tax, VAT, import/export duties or levies, as well as under CPT any insurance cost and - after delivery - any further transportation, loading, unloading and handling charges.** All such costs, charges, taxes and expenses are the responsibility of the Buyer. If the Buyer so requests, VDG may agree, at its sole discretion, to pay the taxes or clear customs and pay the import duties due on the sale, in which case VDG shall issue an invoice to Buyer inclusive of the taxes or import duties paid by VDG.

8.3 Any and all consequences arising out of changes in the rules regarding import duties or of any other taxes levied on the sale of Product shall be at the Buyer's exclusive risk and shall not permit the cancellation of the Contract nor constitute a Force Majeure event.

8.4 The Buyer shall not be released from performance in the event the Buyer is not able to obtain an import or export permit or license nor shall such event constitute a Force Majeure event.

8.5 VDG shall not be obliged to perform any Contract at a price based on a typing or clerical error.

9 INVOICES AND DOCUMENTATION

9.1 VDG shall issue invoices to Buyer together with any documents stipulated as being necessary to obtain payment in the Contract. Mailed, e-mailed, scanned, telecopied or faxed copies of invoices and other Contractual documents shall constitute acceptable documentary tender under the Contract.

9.2 Each Party shall provide all documents expressly required from it under the Contract. A Party who has not received the documents expressly stipulated in the Contract from the other Party may suspend any performance under the Contract, which reasonably depends upon the documents not received, until receipt of such documents.

10 PAYMENT/CREDIT

10.1 The Buyer shall pay VDG for delivered Products **in compliance with the currency, form and conditions of payment specified in the Contract, without adjustments, discounts, deductions, set-off, or withholdings of any kind. The total amount is payable within thirty (30) days of receipt of the invoice, which will be handed out to the Buyer together with the Delivery of the Products.**

10.2 If payment is agreed by letter of credit (L/C) then such L/C shall be in place on or before the date agreed between the Parties and if no such date is agreed then 10 (ten) days prior to the start of the Delivery Period. The L/C shall be for an amount sufficient to cover the mean price under the Contract plus 10 (ten) percent. All L/C charges are for the account of the Buyer. The L/C shall operate in accordance with its terms but no term within the L/C shall operate to vary the terms of the Contract unless expressly agreed by the Parties in writing.

10.3 On a case-by-case basis, to be agreed no later than on the date of the execution of the Contract, VDG may provide the Buyer with credit terms, such terms to be confirmed in writing. If VDG agrees to do so, VDG may, at its sole discretion:

10.3.1 Require the Buyer to provide VDG with a satisfactory guarantee, form of security or adequate assurances of due performance by Buyer of its obligations;

10.3.2 Require amendments of the Payment/Credit terms regarding Products not yet delivered;

10.3.3 Make the Delivery of Products already remitted to the Buyer conditional upon the corresponding payment of the price, in which case any demurrage or damages resulting from delay by Buyer in making such payment shall be exclusively for Buyer's account,

10.3.4 Make any additional requirements of the Buyer, effective immediately upon VDG giving notice to the Buyer.

10.4 If Buyer does not pay VDG in accordance with this paragraph 10 then, without prejudice to any other rights and remedies under the Contract, at law, or otherwise, any and all performance obligations of VDG shall be suspended and VDG shall be entitled to treat itself as being discharged from the Contract.

10.5 The Parties agree that the Buyer's performance of, and compliance with, this paragraph 10 is a condition of the Contract.

11 REPRESENTATIONS / WARRANTIES

11.1 VDG warrants (i) that the Products are consistent with any specifications mutually agreed in the Contract.

11.2 VDG shall not, in any case be responsible for the adequacy of Products to any specific duty or prohibition resulting from the legal and/or governmental order of Buyer's or third parties' State, unless expressly agreed in the Contract. It shall be the Buyer's sole responsibility to ascertain whether the Products may be marketed or distributed outside the European Union. No representations or warranties are made by VDG as to the extent to which the Products comply with non-EU legislation, labelling provisions, or any other applicable non-EU regulations.

11.3 Buyer acknowledges and agrees that, due to unforeseen origination circumstances, **a slight discrepancy may occur with regard to the Specifications of the Product beyond the reasonable control of VDG.** In such a case VDG shall not be liable for such discrepancy if VDG discloses to Buyer evidence that the discrepancy arises from such unforeseen origination circumstances.

11.4 Neither Party shall be liable, whatsoever, for a failure of the other Party's employees, agents or representatives.

11.5 **VDG gives no warranty in respect of, and shall not be liable for, defects caused after Delivery by improper storage, custody, transport or use.** If, after Delivery, the Buyer claims the Products are defective, he shall be obliged to prove that they have been properly stored, handled, transported and/or utilised post-Delivery.

11.6 VDG warrants that it has title to the Products sold under Contract. **All other warranties and conditions implied by law, including but not limited to, any warranty or condition of satisfactory quality and/or fitness for any particular purpose are expressly excluded and disclaimed.**

11.7 Each Party warrants that it has entered into the Contract in a commercial capacity and that with respect to the Contract it is in all respects subject to civil and commercial law in the jurisdictions within which it operates.

11.8 Each Party represents and warrants, at the time this Contract is entered into and at all times while this Contract is in effect, that (i) it is a legal entity duly organised for an unlimited duration and is validly existing under the Regulations of its jurisdiction of incorporation and is in good standing (where such concept applies), with full power and authority to own its assets and to conduct its business as presently being conducted; (ii) it has the corporate power and authority to execute, deliver and perform its obligations under this Contract and has taken all necessary corporate and legal actions to authorise the execution, delivery and performance of this Contract in accordance with its terms, and has obtained and/or fulfilled all licenses, registrations, or other necessary requirements for or in connection with the execution or delivery and performance of this Contract; (iii) this Contract, and all other agreements and documents to be executed by the relevant Party pursuant to, or in connection with, this Contract constitute legal, valid and binding obligations, enforceable against the relevant Party in accordance with the Contract terms; (iv) the execution and delivery of this Contract and the obligations hereunder do not and will not conflict with the laws and regulations by which the Party is governed.

12 MEASUREMENT / INSPECTION

12.1 Unless otherwise agreed, all measurements and tests for quality and quantity shall be made using methods and equipment chosen by VDG, in accordance with international standards or guidelines for the Products. Each Party shall have the right to be, or have a representative, present to witness all loadings, unloadings, tests, measurements.

12.2 If a quality and/or quantity certificate is issued by VDG following the measurement and testing referred to in sub-paragraph 12.1 above, and is attached to the payment documents or otherwise furnished to the Buyer prior to, on, or after Delivery, such quality and/or quantity certificate shall be final, and binding on both Parties, as to the description, specification, quality, quantity, grade, size, weight and condition of the Products on Delivery.

12.3 If no quality or quantity Certificate is furnished, the Buyer shall nevertheless be obliged to accept and pay for the Products, and the resolution of **any dispute as to the description, specification, quality, quantity, grade, size, weight and condition of the Products on Delivery shall be finally settled**

by an independent expert. The Parties shall mutually agree on such an independent expert.

12.4 Upon Delivery, the Buyer shall inspect the Products carefully and without delay.

12.5 If, after inspection, the Buyer contends that the Products do not comply with the Contract, **the Buyer shall immediately, but in any event within 5 working days from Delivery, give written notice of the alleged discrepancies to VDG** (i) setting out full details of the extent to which it is alleged that the Products failed to comply with the Contract, and (ii) providing a sample and/or evidence of analysis for the disputed Product.

12.6 Notwithstanding the provisions of sub-paragraph 12.4 below, in the event the notice, and the sample or analysis are not provided to VDG within 5 working days as stipulated in sub-paragraph 12.5 above, **the Buyer shall be deemed to have accepted the Products**, and any claim by the Buyer shall be formally waived, extinguished and time-barred. This sub-paragraph also applies in the event that Products different to those ordered or of a different quantity to those ordered, are Delivered to the Buyer.

12.7 Without prejudice to the finality of the quantity and/or quality certificates, as set out in sub-paragraph 12.2, in cases, where (i) the notice, and the sample or analysis required by sub-paragraph 12.6 above is provided to VDG, and (ii) there is a dispute between VDG and the Buyer as to whether the Products as Delivered comply with the Contract:

12.7.1 The Parties may nominate a mutually agreed independent inspector to measure and test the Products, in accordance with such methods agreed by the Parties and as instructed by the Parties, within ten (10) days of VDG confirming receipt of Buyer's written notice pursuant to sub-paragraph 12.6,

12.7.2 The independent inspector shall record his findings in a written report,

12.7.3 The report issued by the independent inspector shall be final and binding upon the Parties, save for fraud or manifest error.

12.7.4 The costs of inspection are to be shared jointly between the Parties.

12.8 If the Buyer contends that the Products do not comply with the Contract, the Buyer may not remove the Products, or have them removed, from the place of inspection before their quantity and/or quality (as applicable) have been established conclusively in an inspection report issued in accordance with sub-paragraph 12.7, unless both Parties agree otherwise in writing.

12.9 Notwithstanding the existence of any claim by the Buyer against VDG in respect of the Products, or with respect to any other contract or shipment of Products, the Buyer shall accept the Products and pay VDG the full amount of each invoice in accordance with sub-paragraph 10.1.

12.10 In the event of established and valid claims against VDG regarding quality and/or quantity, **VDG shall be entitled, in its sole discretion, to render substitute performance, by (i) Delivering replacement, defect-free Products, or (ii) by Delivering additional Products to make up the quantity stipulated in the Contract ("Substitute Performance")**. In the event that VDG renders Substitute Performance, the Buyer shall have no claim in contract or tort for any damages or loss associated with the quality or quantity claim, whatsoever. Acceptance by the Buyer of any payment tendered by VDG in settlement of any claim shall constitute a full and complete satisfaction and discharge of such claim. No allowance by VDG of any claim shall constitute a precedent for the allowance of any other claim.

13 EVENTS OF DEFAULT AND TERMINATION

13.1 The Party in default shall be the "Defaulting Party" and the other Party, not in default, shall be the "Non-Defaulting Party". Under the Contract (i) and (ii) below shall individually, or collectively, be defined as an "Event(s) of Default":

(i) if the Defaulting Party is in breach of any material duty or obligation under the Contract, including but not limited to;

(a) the failure by the Defaulting Party to pay any amounts owing when due without adjustments, discounts, deductions, set off, or withholdings of any kind subsequent to notification of the non-payment and a grace period of 5 working days during which the Defaulting Party fails to affect payment; and/or (b) the failure by the Defaulting Party to Collect the Products during the Delivery Period; and/or (c) the Defaulting Party loses or does not possess any licence, or consent which is necessary to perform the Defaulting Party's Contract duties and obligations; and/or (d) any material litigation or other proceedings are commenced or threatened against the Defaulting Party which the Non-Defaulting Party, in its sole discretion, believes might adversely affect the Defaulting Party's ability to pay any amounts due, or otherwise to perform its

Contract duties and obligations; and/or (e) performance of the Contract becomes contrary to any laws and regulations imposed by any government, or any quasi-governmental entity having jurisdiction over the Defaulting Party whose performance is affected;

(ii) if the Defaulting Party

(a) is generally not paying its debts as they become due, (b) files or consents by answer or otherwise to the filing against it of any petition or case seeking relief under any bankruptcy, liquidation, insolvency or similar law (collectively "Insolvency Laws"), (c) becomes bankrupt or insolvent, (d) has an asset value less than its liabilities (taking into account contingent and prospective liabilities), (e) has any petition or proceedings under Insolvency Laws commenced against it, (f) makes a general assignment for the benefit of its creditors, (g) applies for, or consents to, the appointment of a custodian, receiver, trustee, conservator or other officer(s) with similar powers over it or over any substantial part of its property, (h) is subject to the enforcement of any security over any assets of the or any analogous procedure or step is taken in any jurisdiction.

13.2 If at any time an Event of Default with respect to the Defaulting Party has occurred, the Non-Defaulting Party may, in its sole discretion and without prejudice to all other rights under this Contract, at law, or otherwise, by notice in writing to the Defaulting Party:

13.2.1 Suspend and/or terminate the Contract; and/or

13.2.2 Provide a remedy period during which the Non-Defaulting Party shall be conditionally obligated to remedy the Event of Default; and/or

13.2.3 Accelerate any outstanding payment obligations and declare that all amounts accrued and outstanding under the Contract are immediately due and payable without adjustments, discounts, deductions, set off, or withholdings of any kind; and/or

13.3 The exercise of rights under paragraph 13, by VDG shall in no case be construed as a waiver of legal rights, nor as limiting the legal remedies available to VDG upon breach of the Contract by the Buyer.

13.4 If the Buyer is in breach of the Contract, including, without limitation, its obligations to (i) Collect the Products and/or (ii) affect Payment in accordance with the Contract, VDG shall be entitled to claim for all costs and damages caused by the breach.

13.5 In the event the Buyer is the Defaulting Party, VDG's foreseeable damages and losses shall include, without limitation; All damages, losses, and costs associated with VDG's facility or terminal reaching full storage capacity directly or indirectly associated with Buyer's default; Storage costs at market rates, calculated as the difference between contracted quantities which should have been Collected by the Buyer during the relevant period and the quantities actually Collected, or the actual costs for storage charged by a third party / storage provider, whichever is the higher; Drumming costs incurred by VDG, calculated at market rates; Transport costs; Marked-to-market losses, and/or hedging losses; Losses occasioned by any deterioration in the quality of the Products.

13.6 Under this Contract, any payment owed to VDG by reason of VDG's performance of the Contract, or by reason of the Buyer's default, **shall attract a 10% annual interest rate from the day after the relevant day the debt falls due for payment.**

14 FORCE MAJEURE

14.1 Prevention, curtailment, delay, hindrance, interference with, or reduction of, a Party's ability to perform the terms, provisions or conditions of this Contract shall not give rise to any claim by a Party hereto against the other, or be deemed to be a breach of this Contract if the same is proven to be caused by a force majeure, which is not reasonably within the control of the Party affected thereby (the "Relying Party") and which the Relying Party is unable to reasonably prevent, avoid or overcome (a "Force Majeure Event"). Force Majeure Events shall apply equally to VDG, and to VDG's supplier(s) of Products.

14.2 The Relying Party shall immediately after the Force Majeure Event becomes known to the Relying Party give notice in writing to the other Party of the Force Majeure Event and the effects, or the reasonably anticipated effects, on the Relying Party's ability to perform; including as much detail as available, as well as the relief sought by the Relying Party. Force Majeure Event relief is conditional upon the other Party receiving due notice. During the Force Majeure Event both Parties will jointly use reasonable commercial efforts to mitigate the effects of the Force Majeure Event.

14.3 A Force Majeure Event shall not operate to suspend any payment obligation(s) accrued by a Party prior to the written notice of a Force Majeure Event. Notwithstanding the foregoing provisions of this clause should a Force Majeure Event continue unabated for six (6) months the other Party, upon notice to the Relying Party, shall be free to terminate the Contract without Liability. Notwithstanding the foregoing provisions of this clause a Force Majeure Event shall not include any event arising out of the acts of any government or sovereign entity which owns, directly or indirectly, any interest in the Relying Party.

15 LIMITATION OF WARRANTY AND LIABILITY

15.1 Except as provided for in this paragraph 15 or elsewhere in the Contract, **neither Party shall be liable to the other under contract, tort, breach of statutory duty or otherwise, in respect of any indirect or consequential losses or expenses**, whether or not foreseeable, including, but not limited to, (even to the extent the following might otherwise not constitute indirect consequential losses or expenses) loss of anticipated profits, plant shut-down or reduced production, third party claims, goodwill, use, market reputation, business receipts or commercial opportunities.

15.2 Notwithstanding the above provision or any other provision to the contrary, VDG shall be entitled to recover any losses suffered in connection with any hedging or derivative instrument which may relate to the Products. Such losses, if suffered by VDG, shall always be deemed to be foreseeable and recoverable.

15.3 In any event, VDG's liability shall not, in any and all cases, exceed the amount of 100% of the price agreed upon in the Contract for the specific shipment of Products in respect of which VDG's liability has arisen.

15.4 Without derogating from the time limits imposed by any other Contractual provisions requiring compliance within a lesser period of time, all of which shall remain in full force and effect, legal proceedings to enforce any claim or dispute concerning the Contract, or its effect, (without limitation) shall be commenced, by the claimant Party within 1 year from the date on which the Product was Delivered, or absent Delivery, the date upon which the Product should have been Delivered under the Contract, failing which any and all disputes and/or claims shall be deemed waived and time barred and any liability or alleged liability of the other Party shall be finally extinguished.

15.5 The exclusion and/or limitation of claims for damages according to the above paragraphs, applies also to claims against employees and contractors of VDG.

16 NOTICES

16.1 Any notice or other communication to be given under the Contract:

16.1.1 Shall be **in the English language**;

16.1.2 Shall be sent to the Party to whom it is to be given at the address, or in accordance with the electronic messaging details set out in the Contract, or such other address as the Party has previously designated to the other in writing.

16.2 Any such notice or other communication shall, unless otherwise specified in the Contract, be effective if:

16.2.1 In writing and delivered in person or by courier, at the time when it is delivered;

16.2.2 Sent by telex or facsimile transmission, at the time when the recipient's answerback or the confirmation of transmission is received;

16.2.3 Sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), at the time when that mail is delivered or its delivery is attempted (or the receipt is received);

16.2.4 Sent by an electronic messaging system, at the time that electronic message is received; except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which commercial banks are open for business in the place where that notice or other communication is to be given shall be treated as given at the opening of business on the next following day which is such a day.

17 WAIVERS, REMEDIES AND AMENDMENTS

17.1 No failure or delay on the part of a Party in exercising any right, power or remedy under the Contract and no course of dealing between the Parties shall operate as a waiver by either Party of any such right, power or remedy, nor shall any single or partial exercise of any such right, power or remedy preclude any

other or further exercise thereof or the exercise of any other right, power or remedy under the Contract.

17.2 The remedies in the Contract are cumulative and not exclusive of any legal rights or remedies which either Party may otherwise have.

17.3 Except as required by the Contract, no notice or demand by VDG in any case shall entitle the Buyer to any other or future notice or demand in similar or other circumstances or constitute a waiver of the right of VDG to take any other or future action in any such circumstances without notice or demand.

17.4 Any amendment or waiver of any provision of the Contract shall not be effective unless it is made by the express written agreement of both Parties.

17.5 Any sole waiver of any breach of any provision of the Contract by VDG or any failure to take action against the Buyer shall not be considered to be a waiver by VDG of any subsequent or continuing breach of that provision (unless expressly agreed otherwise by VDG in writing) or of their right to take action.

17.6 No waiver by either Party of any breach of any provision of the Contract shall release, discharge or prejudice the right of the waiving Party to require strict performance of any other of the provisions of the Contract.

18 ASSIGNMENTS

This Contract shall bind and inure to the benefit of each Party's **permitted successors and assigns**. Neither Party may assign this Contract, in whole or in part, without the other Party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, provided, however, that no such consent shall be required by VDG for; (i) any assignment in connection with a sale, merger, consolidation, or other business combination transaction, or (ii) any assignment to another company who is acting for VDG.

19 VAT

19.1 Unless otherwise expressly provided in this Contract, the price specified in this Contract (whether fixed or fixed pursuant to the terms of this Contract) is exclusive of VAT.

19.2 If VAT is not to be assessed on the Delivery, the Buyer shall be responsible for supplying all necessary documentation which VDG needs to not assess VAT on the Delivery. If the Buyer fails to provide such documentation to VDG, the VDG may assess VAT on the Delivery at the rate applicable in the country in which the Delivery is assessed for VAT. If VDG assesses VAT on the Delivery, the Buyer shall pay VAT as specified in the VDG's invoice.

19.3 The Buyer shall indemnify and hold VDG harmless for any VAT charged or not charged on any Delivery in reliance upon the Buyer's presentation, or non-presentation, of documents to determine the VAT status of the Delivery.

20 SEVERABILITY

If any provision or portion of this Contract is held to be invalid or unenforceable by any governmental or judicial authority having jurisdiction over it, the validity and enforceability of the remaining portions or provisions of this Contract shall not be affected.

21 APPLICABLE LAW / JURISDICTION

21.1 This Contract and any non-contractual obligations arising out of or in connection with the Contract **shall be governed by and construed in accordance with the substantive laws of Switzerland**. The application of the U.N. Convention on Contracts for the International Sale of Goods (1980; Wiener Kaufrecht) is excluded.

21.2 **Place of Jurisdiction shall be Zollikon, Switzerland**. The courts of Zollikon (Bezirksgericht Meilen) shall have exclusive Jurisdiction.

22 TRADE SANCTIONS

The Parties acknowledges that the laws and regulations of Switzerland, the European Union, the United States, or other applicable laws and regulations may prohibit certain transactions with certain prohibited destinations, persons, entities, and vessels ("Trade Restrictions"). The Buyer will take reasonable commercial steps to ensure that it will not source, deliver, transfer or resell Product, directly or indirectly, from or to, any place, person or entity, or allow the Product to be transported by any means, shipper or vessel, that would cause VDG to be in violation of Trade Restrictions. The Buyer agrees that they shall indemnify and hold VDG harmless for any Liability which may arise, whatsoever, suffered by VDG from or as a result of the Buyer's breach of Trade Restrictions.