

**MABANAFT TERMS AND CONDITIONS AD HOC FUEL SUPPLY  
EFFECTIVE JUNE 1, 2012**

**The Buyer's attention is particularly drawn to the conditions of  
clause 11**

**1. DEFINITIONS**

- 1.1.1. "**agreement**" means the agreement for the supply of Goods from the Supplier to the Buyer incorporating these Terms and Conditions and the Supply Contract.
- 1.1.2. "**Bankruptcy Event**" means the Buyer stops or suspends or threatens to stop or suspend payment of all or a material part of its debts or is unable to pay its debts as they fall due; or ceases or threatens to cease to carry on all or a substantial part of its business; or begins negotiations for, takes any proceedings concerning, proposes or makes any agreement for the deferral, rescheduling or other readjustment, general assignment of or an arrangement or composition with or for the benefit of some or all of its creditors of all or substantially all of its debts; or for a moratorium in respect of or affecting all or substantially all of its debts; or any step is taken by any person with a view to the administration, winding up or bankruptcy of the Buyer; or any step is taken to enforce security over or a distress, execution or other similar process is levied or served against all or substantially all of the assets or undertaking of the Buyer, including the appointment of a receiver, administrator, administrative receiver, trustee in bankruptcy, manager or similar officer; or any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the Bankruptcy Events listed above;
- 1.1.3. "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business. For the avoidance of doubt, any reference to a "day" which is not specified as a "Business Day" shall mean a calendar day of any kind.
- 1.1.4. "**Buyer**" means the person, firm, company or other entity which buys or agrees to buy the Goods from the Supplier;
- 1.1.5. "**Conditions**" means the terms and conditions of sale set out in this document and the Supply Contract.
- 1.1.6. "**Control**" means, in relation to any company, having legal and beneficial ownership of not less than 50 per cent of the voting rights attached to the issued share capital of that company;
- 1.1.7. "**Credit Limit**" means the amount stipulated by the Supplier which amount may be revised at any time in the Supplier's sole discretion.
- 1.1.8. "**Delivery**" means completion of delivery of an Order in accordance with clause 7.1 and deliver and delivered shall be interpreted accordingly.
- 1.1.9. "**Delivery Date**" means the date, or range of dates, or date or dates within a range, stipulated in the Supply Contract when the Goods are to be delivered.
- 1.1.10. "**Goods**" means the fuel and oils whether raw or processed materials which the Buyer agrees to buy from the Supplier.
- 1.1.11. "**Group**" means in relation to a company, that company, its subsidiaries, its holding companies and their subsidiaries. For the purpose of this definition, "Holding company"

- and "subsidiary" shall have the meaning given in section 1159 of the Companies Act 2006;
- 1.1.12. "**Libor**" means the London Interbank Offer Rate, published at or around 11 a.m. London time on the relevant day by the British Bankers' Association in conjunction with Reuters;
- 1.1.13. "**month**" means a calendar month.
- 1.1.14. "**Order**" means an order for Goods submitted by the Buyer in accordance with clause 2.
- 1.1.15. "**Price**" means the price for the Goods excluding VAT and excluding excise duty.
- 1.1.16. "**Supplier**" means Mabanafit Limited
- 1.1.17. "**Specification**" means the specification or description of the Goods set out in the Supply Contract or otherwise given by the Supplier.
- 1.1.18. "**Supply Contract**" means the confirmation of the Goods, Price, payment terms, Delivery Date and supply terminal and any special terms and conditions agreed in writing by the Supplier and which relate to the Goods.

- 1.2. Clause headings shall not affect the interpretation of the agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4. The Supply Contract forms part of the agreement and shall have effect as if set out in full in the body of these Terms and Conditions and any reference to the agreement includes the Supply Contract. In the event of any inconsistency between a provision of these Terms and Conditions and a provision of the Supply Contract, the latter shall prevail.
- 1.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular shall include the plural and vice versa.
- 1.7. A reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of the agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of the agreement.
- 1.9. A reference to **writing** or **written** includes faxes and e-mails.
- 1.10. Any obligation in the agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of the agreement) at any time.
- 1.12. References to clauses are to the clauses of these Terms and Conditions.
- 1.13. Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.14. A reference to a "party" or "parties" shall mean either the Buyer or the Supplier or both of them.

**2. CONDITIONS APPLICABLE**

- 2.1. The Conditions shall apply to all contracts for the sale of the Goods by the Supplier to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document or which are implied by trade, custom, practice or course of dealing.
- 2.2. All requests by the Buyer for the Goods including any Order shall be deemed to be an offer by the Buyer to purchase the Goods pursuant to the Conditions and shall constitute acceptance of the Conditions. After placing an order the Supplier will confirm the Order by e-mail or telephone, and

the offer will only be accepted and the contract between the parties formed once the Supplier gives the Buyer such confirmation of the Supply Contract.

- 2.3. Acceptance of delivery of the Goods or any part of them shall be deemed conclusive evidence of the Buyer's acceptance of the Conditions.
- 2.4. The Supply Contract and these Conditions constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Supply Contract.
- 2.5. Any variation to the Conditions shall be inapplicable unless agreed in writing by an authorised representative of the Supplier.
- 2.6. Where the Supply Contract refers to more than one transaction, the Conditions shall apply to each transaction separately.

### 3. GOODS PRICE

- 3.1. The Price of each Order of Goods shall be the amount expressed per unit and in the currency set out in the Supply Contract. For the avoidance of doubt, the Price shall be exclusive of any applicable excise duty and/or Value Added Tax and/or Mineral Oil Tax which shall be due on the same day as the payment for the Goods is due and shall be calculated at the rate ruling on the Delivery Date.
- 3.2. Where the Price is expressed in United States Dollars per metric ton, then for the purposes of payment:-
  - 3.2.1. United States Dollars shall be converted to Pounds Sterling using the arithmetic mean of the Financial Times GBP/USD closing exchange rate quotations for the same dates as the product pricing dates. If the situation arises where a Financial Times GBP/USD exchange rate is published, but there is no reciprocal product price publication for that date, the exchange rate is to be excluded from the arithmetic mean; and
  - 3.2.2. the metric ton Price shall be converted to the litre Price by dividing the metric ton Price by the relevant number below in accordance with of the type of Goods concerned:-

Diesel:	1183
Gasoil:	1183
Kerosene:	1250
Gasoline	1325
- 3.3. The Supplier shall calculate the Price on the basis of pounds sterling per litre (GBP£ per litre) and shall round the Price to four (4) decimal places.
- 3.4. The Supplier shall invoice the Price on the basis of pence (sterling) per litre which will be calculated in accordance with clause 3.3 and then shown on this invoice rounded to two (2) decimal places.

### 4. TERMS OF PAYMENT

- 4.1. Unless specified otherwise in the Supply Contract, the Supplier shall issue an invoice upon each lifting or delivery of the Goods and each invoice shall specify the relevant Load Number(s). Provided that the original invoice shall be sent to the Buyer as soon as is practicable thereafter, invoices may be issued by the Supplier by way of an electronic copy (via email) or by facsimile and, for the purposes of clause 4.2, shall thereby be treated as validly issued to the Buyer at the time and date determined in accordance with clause 17.3.2.
- 4.2. Subject to clause 4.5, The Buyer shall ensure that all sums due under the Supplier's invoices are received in the Supplier's bank account on the stated due date ("Due Date") in full and in cleared funds without any deduction, set-off, or counterclaim in accordance with the period and method for payment set out in the Supply Contract. Where no period for payment has been specified in the schedule, the Due Date shall be (14) calendar days from the earlier of (a) the date of the invoice; or (b) the date of delivery.
- 4.3. In the event that the due date for payment due date calculable in accordance with clause 4.2 is either a Saturday or a bank or public holiday in the country in which

the payment is to be received (other than a bank holiday falling on a Monday), then the due date shall be moved to the preceding business day in that country. In the event that the due date calculable in accordance with clause 4.2 is either a Sunday or a bank or public holiday in the country in which the payment is to be received falling on a Monday, then the due date shall be moved to the following business day in that country.

- 4.4. If the Buyer fails to make any payment under the agreement by the Due Date, then, without limiting the Supplier's remedies under clause 10, the Buyer shall pay interest on the overdue amount at the rate of 2% per annum above one month LIBOR rate published by the BBA on the first date the amount owed is overdue. Such interest shall accrue on a daily basis from the Due Date until the date the overdue amount is received in full and cleared funds in the Seller's bank account, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 4.5. If the Buyer disputes any invoice or other statement of monies due, the Buyer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within seven (7) days of the Buyer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 20, Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 4.2.
- 4.6. All payments payable to the Supplier or the Buyer under the agreement shall become due immediately on its termination. This clause 4.6 is without prejudice to any right to claim for interest under the law or under the agreement. Where the price to be paid by the Buyer in respect of Goods supplied prior to determination is to be calculated on the basis of the prices in effect during calculation period which starts before the date of termination and finishes after it, the Supplier shall be entitled to issue an invoice immediately on termination using the relevant prices for such part of the calculation period as precedes the date of termination.
- 4.7. Notwithstanding any other provision of the Conditions to the contrary, where the total value (as determined by the sale price under each contract concerned and inclusive of excise duty and VAT) of all unpaid Goods which have been delivered to the Buyer under this contract and all other contracts between the Supplier and the Buyer exceeds the prevailing Credit Limit, then the payment of the Price in full is to be made by the Buyer to the Supplier before delivery of the Goods or any part of them shall take place.
- 4.8. Any and all taxes, duties, fees, assessments, charges or other impositions in respect of any of the Goods (or relating to their production, storage, transportation, use, sale, delivery, transfer of title to Buyer and/or Buyer's payment therefor) imposed, levied, or assessed by H.M. Government or other regulatory or public authority whether existing at the time of contracting or arising thereafter, are for the Buyer's account.

### 5. THE GOODS

- 5.1. The quantity and description of the Goods shall be as stipulated in the Supply Contract.
- 5.2. The Supplier will comply with the European REACH regulation (No.1907/2006) and further warrants that the Good(s) sold to Buyer has or have been pre-registered with ECHA. Upon request of the Buyer, the Supplier will provide the relevant safety data sheet.
- 5.3. The Goods contain or may contain materials detrimental to health and are to be used only for the purpose for which they are intended. Every precaution must be taken by the Buyer to avoid spilling. Prolonged contact with hydrocarbon Goods may cause irritation or more serious skin disorders. The Buyer must ensure that proper precautions are taken by those likely to come into contact with the Goods and should take medical advice thereon.

### 6. WARRANTIES

- 6.1. The Supplier warrants that the Goods shall, when delivered to the Buyer
  - 6.1.1. conform to the Specification (including any tolerances therein); and
  - 6.1.2. be of satisfactory quality (within the purpose of the Sale of Goods Act 1979).
- 6.2. All Goods shall be free from water and other impurities in an amount in excess of those typical for such Goods. All Goods shall be a homogeneous blend of components from petroleum processing. Small amounts of additives (less than or equal to 0.5%) may be present to improve Goods performance. However, any intentional addition of other compounds, including but not limited to oxygenates, or addition of performance additives or other compounds from any source in concentrations greater than 0.5 w/w% are prohibited, unless agreed upon by the Buyer and Supplier.
- 6.3. Except for the warranties in clause 6.1 and 6.2 and the terms implied by Sections 12(1) and 12(2) of the Sale of Goods Act 1979, the Supplier hereby excludes to the fullest extent permitted by law any other condition, warranty or other term in relation to quality, merchantability, fitness or suitability of any Goods for any particular purpose or otherwise howsoever, whether express or implied, and whether arising under statute, common law, custom of trade, course of dealing or otherwise.

## 7. DELIVERY

- 7.1. The Supplier shall deliver each Order at the appropriate supply terminal stipulated in the Supply Contract in accordance with the Delivery Date. The Goods shall be deemed to be delivered:
  - 7.1.1. in respect of ex rack supplies at the Supplier's premises when it passes from the collection depot's delivery pipe to the first connecting flange of the Buyer's truck or vehicle;
  - 7.1.2. in respect of delivered in supplies at premises specified by the Buyer, when it passes the last flange of the delivery truck to the first connecting flange of the Buyer's receiving equipment. The Order shall be completed upon delivery of the full quantity of Goods comprised in the Order; and
  - 7.1.3. in respect of Goods to be supplied by way of a third party bunkering network ("Network"),
    - 7.1.3.1. Delivery of the Goods to the Network shall take place when the Goods pass the last connecting flange of the Supplier's delivery vehicle to the first connecting flange of the storage tank at a site within the Network; and
    - 7.1.3.2. Delivery from or collection of Goods from the Network to the Buyer shall take place when the goods pass the last connecting flange of the relevant Network site's storage tank to the first connecting flange of the receiving vehicle.
- 7.2. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 7.3. The Supplier or its representatives will measure the volume of the Goods delivered. Following such measurement, the Supplier will certify the volume delivered to the Buyer in writing, and such certification shall be conclusive as to the volume actually delivered to the Buyer.
- 7.4. The Supplier does not accept responsibility for the dipping, checking or testing of the Buyer's tanks. This together with the obligation to see that the truck or other operator couples up with the correct feed on the Buyer's tanks, rests entirely upon the Buyer. The Buyer is responsible for ensuring that the receiving tanks into which the delivery of the Goods or any instalment of them is to be made will accommodate the full quantity to be delivered and are fit to receive them.
- 7.5. Delays in the delivery of an Order shall not entitle the Buyer to:
  - 7.5.1. refuse to take delivery of the Order; or

7.5.2. terminate the agreement.

- 7.6. The Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the Buyer's failure to comply with its obligations under the agreement.
  - 7.7. If the Buyer fails to take delivery of an Order by the Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the agreement:
    - 7.7.1. delivery of the Order shall be deemed to have been completed at 9.00am on the Delivery Date; and
    - 7.7.2. the Supplier shall store the Order until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
  - 7.8. The Buyer shall ensure that the site and Goods storage facilities at the Delivery Address are accessible, safe and suitable in all respects for delivery of the Good and shall inform the Supplier in advance of any important health and safety rules, procedures or notices in respect of the delivery site. Without prejudice to clause 11.3 the Supplier and its agents shall not be liable for any loss or damage caused to the extent that such loss or damage is attributable to the Buyer's failure to comply with its obligations under this clause 7.8 and the Buyer shall indemnify and keep indemnified the Supplier and its agents for any loss or damage that they may suffer from such failure to comply.
  - 7.9. Without prejudice to clause 11.3 and the Buyer's statutory rights, the Supplier shall not be responsible in any respect whatsoever for any loss or damage arising from the Buyer's own storage or use of the Goods where such loss or damage is caused by the hazards or risks (associated with the Goods delivered hereunder) that have been identified by the Supplier in the health, safety and environmental sheets or the other information provided by the Supplier to the Buyer in respect of the Goods in question.
- ## 8. ACCEPTANCE AND DEFECTIVE GOODS
- 8.1. The Buyer may reject any Goods delivered to it that do not comply with clause 6.1 or 6.2, provided that notice of rejection is given to the Supplier within two Business days of delivery.
  - 8.2. If the Buyer fails to give notice of rejection in accordance with clause 8.1, it shall be deemed to have accepted such Goods.
  - 8.3. If the Buyer rejects Goods under clause 8.1 then the Buyer shall be entitled to return the Goods in question and:
    - 8.3.1. require the Supplier to make good or replace the rejected Goods; or
    - 8.3.2. require the Supplier to repay the price of the rejected Goods in full.
  - 8.4. Once the Supplier has complied with the Buyer's request, it shall have no further liability to the Buyer in respect of the rejected Goods' failure to comply with clauses 6.1 and 6.2.
  - 8.5. The terms of the agreement shall apply to any rectified or replacement Goods supplied by the Supplier.
  - 8.6. Any disagreement as to the quality of any Goods supplied to the Buyer shall be resolved according to the procedures for resolving disputes laid down by BS EN ISO 4259 "Petroleum Goods – Determination and application of precision data in relation to methods of test". Additionally the precision should be determined in accordance with BS/ISO 5725.
  - 8.7. Without prejudice to the other subclauses of this clause, notice of any claim for damage, defect, variance of quality or description, or shortage in quantity shall be given by the Buyer in writing to the Supplier at its address given in the Supply Contract within three days after the Goods or the relevant instalment of them are delivered or, in the case of non-delivery of the whole consignment, within three days after the date upon which they should have been delivered, and (where appropriate) such notice shall state when and where the Goods may be inspected by the Supplier. The giving of such notice shall be a condition precedent to any such claim, and in default of such notice the Supplier shall not be liable in respect of such damage, defect, variance or

shortage, and the Buyer shall be liable to pay for the full quantity of the Goods to which the delivery relates.

- 8.8. Notwithstanding any other provision of the Conditions to the contrary, the Supplier shall in any event be discharged from all liability whatsoever in respect of the Goods, unless suit is brought by the Buyer within one year of the Delivery Date.

#### **9. TITLE AND RISK**

- 9.1. Risk in Goods shall pass to the Buyer on Delivery.
- 9.2. Title to Goods shall not pass to the Buyer until the Supplier has received payment in full (in cash or cleared funds) for:
- 9.2.1. such Goods plus excise duty and VAT in full; and
- 9.2.2. all other sums which are or which become due to the Supplier from the Buyer for sales of Goods or on any account.
- 9.3. Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and any part of them on a fiduciary basis as bailee for the Supplier.
- 9.4. Notwithstanding that the Goods (or any part of them) remain the property of the Supplier the Buyer may sell or use any part of the Goods delivered to the Buyer in the ordinary course of the Buyer's business at full market value for the account of the Supplier. Any such sale or dealing shall be a sale or use of the Supplier's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales and dealings. Until property in the Goods passes from the Supplier the entire proceeds of sale or otherwise of the Goods or any part of them shall be held in trust for the Supplier and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Supplier's money.
- 9.5. The Supplier shall be entitled to recover the Price (plus excise duty and VAT) notwithstanding that property in the Goods or any part of them has not passed from the Supplier.
- 9.6. Until such time as property in the Goods passes from the Supplier the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Supplier. If the Buyer fails to do so the Supplier may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods or any part of them. On the making of such request the rights of the Buyer under clause 9.4 shall cease.
- 9.7. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Supplier. Without prejudice to the other rights of the Supplier, if the Buyer does so all sums whatever owing by the Buyer to the Supplier shall forthwith become due and payable.
- 9.8. The Buyer shall insure and keep insured the Goods or any part of the Goods delivered to the Buyer to their full value against 'all risks' to the reasonable satisfaction of the Supplier until the date that property in the Goods passes from the Supplier, and shall whenever requested by the Supplier produce a copy of the policy of insurance. Without prejudice to the other rights of the Supplier, if the Buyer fails to do so all sums whatever owing by the Buyer to the Supplier shall forthwith become due and payable.

#### **10. REMEDIES OF SUPPLIER**

- 10.1. If the Buyer fails to comply with the agreed terms of payment or the Buyer fails to take delivery of the Goods or any part of them within the time specified by the Conditions, or where the supplier becomes subject to a Bankruptcy Event, then without prejudice to the Supplier's other rights under the Conditions or at law the Supplier shall have the right to discontinue the supply of any goods whether agreed or otherwise (including, but not limited to, the Goods or any part of them) and the Supplier shall have the right to cancel any or all outstanding instalments or contracts (including, but not limited to, this contract) and shall be entitled to claim against the Buyer for any loss or damage in consequence of the non-completion and/or breach of this contract and/or any other contract.

- 10.2. Where the price to be paid by the Buyer in respect of Goods supplied prior to any such discontinuation or termination is to be calculated on the basis of the prices in effect during a calculation period which starts before the date of termination and finishes after it, the Supplier shall be entitled to issue an invoice immediately on termination using the relevant prices for such part of the calculation period as precedes the date of termination.

- 10.3. It is a condition of sale of the Goods by the Supplier to the Buyer that the Buyer will strictly observe all the conditions of their petroleum storage licence and any and all statutory and other legal requirements whatsoever that are imposed upon the Buyer in respect of the receipt, carriage, storage or use of the Goods or other petroleum Good and that they will not permit smoking or naked light nor electric or gas fires or radiators nor ignition sources of any kind whatsoever near to the tank or inlet pipe into which a delivery of the Goods or other petroleum Good is being made or a vent pipe connected to such a tank and will indemnify the Supplier against any damages, claims or costs arising out of the breach of this condition.

#### **11. REMEDIES OF BUYER**

- 11.1. Where the Buyer rejects the Goods then the Buyer shall have no further rights whatsoever in respect of the supply to the Buyer of the Goods or the failure by the Supplier to supply goods which conform to the Supply Contract. Where the Buyer accepts or has been deemed to have accepted the Goods then the Supplier shall have no liability whatsoever to the Buyer in respect of those Goods.
- 11.2. This clause 11 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 11.2.1. any breach of a Supply Contract;
- 11.2.2. any use made or resale of the Goods by the Buyer, or of any product incorporating any of the Goods; and
- 11.2.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the agreement.
- 11.3. Nothing in the agreement shall limit or exclude the liability of either party for:
- 11.3.1. death or personal injury resulting from negligence; or
- 11.3.2. fraud or fraudulent misrepresentation; or
- 11.3.3. payment of sums correctly invoiced under the agreement together with all interest charged on such sums in the event of non payment; or
- 11.3.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 11.4. Without prejudice to clause 11.3, the Supplier shall not be liable to the Buyer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 11.4.1. loss of profit; or
- 11.4.2. loss of goodwill; or
- 11.4.3. loss of business; or
- 11.4.4. loss of business opportunity; or
- 11.4.5. loss of anticipated saving; or
- 11.4.6. loss or corruption of data or information; or
- 11.4.7. special, indirect or consequential damage suffered by the other party that arises under or in connection with the agreement.
- 11.5. Without prejudice to clause 11.3, the Supplier's total liability arising under or in connection with any Supply Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to £1,500,000.

#### **12. ASSIGNMENT AND SUB-CONTRACTING**

- 12.1. The Buyer may not assign or transfer or sub-contract any or all of its rights, benefits or obligations under this Agreement in whole or in part without the prior written consent of the Supplier.

#### **13. TERM AND TERMINATION**

- 13.1. The agreement shall commence on the date on which the Supply Contract commences and shall continue until Supply Contract has been fulfilled unless or until terminated earlier in accordance with this clause 12.1.
- 13.2. Without prejudice to its other rights or remedies, the Supplier may suspend the supply of any Goods or terminate the agreement on written notice effective immediately:
- 13.2.1. in the event of a Bankruptcy Event in relation to the Buyer; or
  - 13.2.2. if there is a Change of Control of the Buyer; or
  - 13.2.3. if the Buyer commits a material breach of the agreement and does not remedy such breach within 30 days of being required to so do by written request from the Supplier.
- 13.3. A Change of Control shall occur for the purposes of the agreement where:
- 13.3.1. a person acquires Control of the Buyer where no person previously had Control of Buyer; or
  - 13.3.2. the ultimate parent company of the Buyer ceases to have Control of the Buyer; or
  - 13.3.3. a person acquires Control of the ultimate parent company of the Buyer; or
  - 13.3.4. a person who is not under the Control of the ultimate parent company of the Buyer acquires Control of the Buyer.

#### **14. FORCE MAJEURE**

- 14.1. Neither Party shall be deemed to be in breach of the agreement or liable to the other by reason of any delay, omission or failure in performance or in the non-performance of any of its obligations hereunder (except in relation to obligations to make payments under the agreement) to the extent that such delay, omission or failure in performance or non-performance or any other liability arises out of an event of Force Majeure.
- 14.2. For the purposes of the agreement "Force Majeure" shall mean any circumstances whatsoever that are not within the reasonable control and that are without the fault or negligence of the Party wishing to rely on the circumstances and may include (without limitation) flood, tempest or other adverse weather conditions, acts of God, war, insurrection, sabotage, terrorist activities, strikes, lock-outs or other industrial action, compliance with any acts, regulations by laws, order or restrictions including any arrangements under which a public authority is entitled to require crude petroleum or other petroleum Goods.
- 14.3. If either Party is unable to perform any of its obligations under the agreement by reason of Force Majeure it shall as soon as reasonably practicable so notify the other Party and provide it with all such information as it may have at that time regarding the cause of Force Majeure and its anticipated duration and shall thereafter keep the other Party regularly informed as to the anticipated duration of the Force Majeure.
- 14.4. If either Party is unable to perform any of its obligations under the agreement due to a Force Majeure event it shall take and continue to take all such steps as are reasonably practicable and as can be taken at reasonable cost to bring the Force Majeure to an end or to overcome the effects of force majeure as soon as reasonably practicable but neither Party shall be obliged to settle any strike, work-to-rule, go-slow or any other actual threatened or anticipated form of industrial action (including lockouts).
- 14.5. If there is a shortage or failure of supply of Goods to the Supplier for reasons of Force Majeure then the Supplier shall be at liberty to withhold, reduce or suspend delivery to the Buyer to such extent and in accordance with such priorities as may be reasonable and equitable in all the circumstances pertaining at the relevant time and the Supplier shall not be bound to acquire by purchase or otherwise additional quantities from other suppliers. Any additional quantities which the Supplier does acquire from other suppliers or from an alternative source may be used by the Supplier at its complete discretion. The Buyer shall be free to purchase from other suppliers any deficiency of delivery caused by the operation of this clause 14.

- 14.6. If any Force Majeure persists for more than 60 days the Parties shall within 30 days thereafter meet in order to negotiate in good faith an amendment to the terms of the agreement which may be affected by the Force Majeure to give effect to the intent of the Agreement so far as is possible given the presence of a Force Majeure event. If the Parties fail to agree amended terms within the 30 days described above, then the Party that did not give the notice of Force Majeure under this clause may terminate the agreement immediately thereafter by giving written notice to the other Party.

#### **15. SEVERANCE**

- 15.1. If any provision of the agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 15.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **16. FURTHER ASSURANCE**

- 16.1. Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to the agreement and the transactions contemplated by it.

#### **17. NOTICES**

- 17.1. A notice served under the agreement:
- 17.1.1. shall be in writing in the English language;
  - 17.1.2. shall be signed by or on behalf of the party giving it;
  - 17.1.3. shall be sent for the attention of the representative of the other party, and to the address or fax number, set out in the Supply Contract (or such other address, fax number or person as the relevant party may notify to the other parties in accordance with the provisions of this clause 17); and
  - 17.1.4. shall be:
    - 17.1.4.1. delivered personally; or
    - 17.1.4.2. sent by fax or email; or
    - 17.1.4.3. sent by commercial courier; or
    - 17.1.4.4. sent by pre-paid first-class post or recorded delivery; or
    - 17.1.4.5. (if the notice is to be served by post outside the country from which it is sent) sent by airmail requiring signature on delivery.
- 17.2. A notice or any other communication given in connection with the agreement is deemed to have been received:
- 17.2.1. if delivered personally, at the time of delivery; or
  - 17.2.2. in the case of fax or email, at the time of transmission; or
  - 17.2.3. if sent by commercial courier, at the time of signature of the courier's delivery receipt; or
  - 17.2.4. in the case of pre-paid first class post or recorded delivery, 9.00 am on the second Business Day after posting; or
  - 17.2.5. in the case of airmail, 9.00 am on the fifth Business Day after posting.
- 17.3. For the purposes of this clause:
- 17.3.1. all times are to be read as local time in the place of deemed receipt; and
  - 17.3.2. if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on any Business Day), the notice shall be deemed to have been received at the opening of business on the next Business Day in the place of receipt.
- 17.4. To prove delivery, it is sufficient to prove that the notice was transmitted by fax or email to the fax number or email address of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### **18. RIGHTS OF THIRD PARTIES**

18.1. No term of the agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

#### 19. GOVERNING LAW AND JURISDICTION

19.1. The agreement 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 English law.

19.2. Subject to clause 20 the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the agreement or its subject matter or formation (including non-contractual disputes or claims).

#### 20. DISPUTE RESOLUTION PROCEDURE

20.1 If a dispute arises out of or in connection with these Terms, a Supply Contract or their performance, validity or enforceability (“Dispute”) then, except as expressly provided in the agreement, the parties shall follow the dispute resolution procedure set out in this clause:

20.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“Dispute Notice”), together with relevant supporting documentation. On service of the Dispute Notice representatives of the Supplier and of the Buyer shall attempt in good faith to resolve the Dispute;

20.1.2 if the representatives of the Supplier and the Buyer are for any reason unable to resolve the Dispute within fourteen (14) days of service of the Dispute Notice, the Dispute shall be referred to a Senior Representative of the Supplier and a Senior Representative of the Buyer who shall attempt in good faith to resolve it; and

20.1.3 if the Senior Representatives are for any reason unable to resolve the Dispute within 20 days of it being referred to them, either party shall be free to commence court proceedings.

#### 21. WAIVER

21.1. Any waiver of any right under the Supply Contract or these Conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

21.2. No failure to exercise or delay in exercising any right or remedy provided under these Conditions or by law constitutes a waiver of such right or remedy nor shall it prevent any future exercise or enforcement of such right or remedy.

21.3. No single or partial exercise of any right or remedy under these Conditions shall prevent or restrict the further exercise of that or any other right or remedy.

#### 22. CONFIDENTIALITY

22.1. Each party undertakes that it shall not at any time disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (“Confidential Information”), except as permitted by clause 22.2.

22.2. Each party may disclose the other party's Confidential Information:

22.2.1. to its employees, officers, agents, consultants or sub-contractors (“Representatives”) who need to know such information for the purposes of carrying out the party's obligations under these Conditions or the Supply Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause 21 as though they were a party to the agreement. The

disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause; and

22.2.2. as may be required by law, court order or any governmental or regulatory authority.

22.3. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.