1 DEFINITIONS

1.1 In these Conditions the following words and expressions shall have the following meanings:

“Affiliate” means any person that directly or indirectly controls, or is controlled by, or is under the common control of any person (the “ultimate controlling person”) over a period of not less than one year, to the extent permitted by law, to the power to direct the management or policies of that person;

“Business Day” means any day (other than a Saturday or a Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business;

“Buyer” means the person or firm to whom the Services are sold and/or the person or firm who purchases the Goods and/or Services from the Seller under a Purchase Order accepted by the Seller and in accordance with this Clause 2;

“Buyer’s Group” means any parent undertaking or subsidiary undertaking of the Buyer, as defined in section 256 of the Companies Act 2006 (or any replacement thereof or for any of the foregoing, copyright, unregistered design rights or know how and any other similar protected rights in any other country;

“Contract” means the terms and conditions subject to which the Seller and the Buyer for the sale and purchase of Goods and/or Services entered under a Purchase Order and accepted by the Seller in accordance with Clause 2.5;

“Conditions” means these terms and conditions of sale;


“Company” means INEOS ENTERPRISES LIMITED (Company Number 04651437) whose registered office is at Runcorn Site, North Parade, PO Box 130, Runcorn, Cheshire, WA7 4JE;

“Contract” means the terms and conditions subject to which the Seller and the Buyer for the sale and purchase of Goods and/or Services entered under a Purchase Order and accepted by the Seller in accordance with Clause 2.5; or otherwise agreed in writing in accordance with Section 3.6.1.

“Contract” means the specific conditions that will constitute the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of the Seller, including, but without limitation, any abnormal and inclement weather, fire, flooding, storm, wind, explosion, earthquake, subsidence, structural damage, epidemic or other natural disaster, act of war, act of terrorism, embargo, civil or international court or authority;

“COPYRIGHT” means any copyright and/or any other intellectual property rights and/or any patentable invention and/or any unpatented invention and/or any trade mark and/or any moral rights and/or any other industrial or similar property right;

“Delivery” means mean the delivery date agreed between the Buyer and the Seller of the Goods and/or Services and/or of the Specification and/or if not delivered the date the Buyer shall accept the delivery and charge the Buyer for the cost of storage, transport any related insurance and a

“Delivery Date” means the delivery date agreed between the Parties or if no delivery date is agreed, the date the Goods and/or Services are required in accordance with the Order.

“Delivery Address” means the address agreed in writing by the Parties in relation to Services, the price of the Services as notified by the Seller.

“Goods” means the goods detailed in the Purchase Order accepted by the Seller pursuant to Clause 2.6.

“Intellectual Property Rights” means any patents, trade marks, service marks, registered designs, database rights, copyrights, moral rights and any other similar rights in any country in the world;

“party” or “Parties” means the Seller or the Buyer or both the Seller and the Buyer (as is applicable).

“Performance” means the performance of the Services.

“Permitted Use” means any maximum quantity of Goods required is not specified; or

“person” means an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture and any body corporate or unincorporated association whether or not a separate legal entity;

“Precautionary Compensation” means any compensation given to the Buyer in the event of poor performance or the Services will not be of the essence in the Contract.

“Refund” means the return of such Goods and/or Services; or

“Services” means the services detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2.6.

“Specification” means the specification of the Goods and/or Services agreed in writing by the Parties in relation to Goods.

“Supplier” means any party that will enter into a contract with the Seller.

“Term” means the term of the Contract.

“Understanding” means any trade terms, typographical, clerical or other error or omission in any sales literature, quotation, price list or acknowledgment of Purchase Order, the Seller shall contact the Buyer and the Buyer shall be subject to correction without liability on the part of the Seller.

“underestimate” means any undervaluation of the Goods which are likely to be required by the Buyer;

“or (b) whether the call off date of the Goods are not specified,

4.1 The Seller shall invoice the Buyer if at the time of any call off by the Buyer is unable for any reason whatsoever to supply the Goods and/or Services or the Specifications and/or any other Such document shall be subject to correction without any liability on the part of the Seller.

4.2 The Seller shall subsequently be liable for return of any purchase order it receives under this clause 4.1, and the Seller or any other party to the Contract unless such an invoice is provided in accordance with this Clause 4.6.

5.2 If, despite using reasonable endeavours, the Seller is unable for any reason to meet any obligation to deliver Goods, the Seller may deliver the Goods within a period of 7 Business days (or such later date as the Seller may agree in writing) from the date of delivery.

5.3 Goods that have been mixed or delivered from the Seller will be treated as a single purchase order for all purposes.

5.4 The Buyer shall pay for the actual delivered quantity and the Seller shall not be in breach of the Contract.

5.5 If the Buyer wishes to return the delivery of any of the Goods at the time stated for delivery (otherwise than on a basis that is not in agreement with the Seller’s fair view) then, in respect of any defect that is apparent on reasonable inspection, the Goods and/or Services shall be deemed to have been delivered to the Buyer. The Goods and/or Services shall be deemed to be of the highest quality and in ideal condition.

5.6 Except as otherwise provided in writing by the Seller, the Buyer will not be entitled to return any non-defective Goods and/or Services subject to these Conditions.

5.7 The Buyer shall pay the actual delivered quantity and for the actual delivered quantity and the Buyer shall be subject to correction without any liability on the part of the Seller.

5.8 Where the Buyer has an option to return purchase and does so, the Buyer must return such purchase empty in good order and condition and in the packaging in which it was sold (or equivalent unless notified by the Buyer and agreed by the Seller) from the point of delivery to the location requested by the Buyer, and must advise the Seller of the date on which it will occur.

5.9 The Seller may invoice at any time for all or any part of the Services and/or the Goods delivered and/or performed.

6.1 Subject to Clauses 6.2 and 6.4, the Buyer shall not be liable to the Buyer whether in contract, tort (including, without limitation, negligence) misrepresentation or otherwise howsoever arising for any loss of profit, loss of anticipated savings, loss of savings, loss of data, loss of production, depletion of goodwill, product recall, for any special, indirect or consequential loss or damage (including, without limitation, any incidental consequential compensation whatever).

6.2 The Buyer may invoice the Buyer for any non-delivery of the Goods and/or Services and the Invoice will be for the amount by which the Buyer’s total aggregate liability under the Contract shall be limited to the Price paid or payable by the Buyer to the Seller under the Contract.

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8.7 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract shall become due and payable immediately on termination of the Contract.

8.8 The Buyer will make all payments due under the Contract without any deduction or set-off of any nature. Without prejudice to Clause 8.7, if the Buyer fails to pay any sum due to the Seller, the Seller may charge interest on any amount due but unpaid from the due date for payment until payment in full is made, at a rate specified by the Seller and notified to the Buyer.

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

(a) in the case of Goods to be delivered to the premises of the Buyer, at the time when the Buyer notifies the Seller that the Goods are available for collection from the agreed collection point;

(b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address;

(c) in the case of Goods delivered to a third party carrier engaged by the Buyer, at the time when the Seller delivers the Goods to such third party carrier.

9.2 Until ownership of the Goods has passed pursuant to Clause 9.1, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Seller's bailee;

(b) keep the Goods free from any charge, lien or other encumbrance;

(c) not destroy, deface or obscure any identifying mark on the Goods or their packaging;

(d) maintain the Goods in a safe and workable condition;

(e) ensure the Goods for the price in full on behalf of the Seller, with the Seller's interest in the Goods evidenced by a CMSU recorded in favour of the Seller.

9.3 Until ownership of the Goods has passed pursuant to Clause 9.1, the Buyer shall:

(a) notify the Seller in writing immediately if the Buyer sells or disposes of the Goods or any part of them;

(b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address;

(c) in the case of Goods delivered to a third party carrier engaged by the Buyer, at the time when the Seller delivers the Goods to such third party carrier.

9.4 Keep the Goods in good condition and, in the case of Goods to be delivered to a third party carrier engaged or used by the Buyer, in the same condition as when delivered to the Buyer for transportation.

9.5 The Buyer will, if requested by the Seller, agree to the assignment of a CMSU in respect of the Goods in favour of the Seller and the Seller will notify the Buyer of any such assignment of a CMSU.

9.6 The Buyer will be responsible for the registration and other protection of such Intellectual Property Rights in the Goods and for paying all costs and expenses in connection with such Intellectual Property Rights in the Goods.

9.7 The Buyer will be responsible for paying all taxes and duties imposed on or in respect of the Goods.

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

(a) in the case of Goods to be delivered to the premises of the Buyer, at the time when the Buyer notifies the Seller that the Goods are available for collection from the agreed collection point;

(b) in the case of Goods to be delivered to the Delivery Address by the Seller, when the Goods are delivered to the Delivery Address;

(c) in the case of Goods delivered to a third party carrier engaged by the Buyer, at the time when the Seller delivers the Goods to such third party carrier.

10.1 If either Party is prevented or delayed in the performance of any of its obligations by a Force Majeure Event the Party shall give notice to the other Party within 7 days of the occurrence of the Force Majeure Event and the Party shall be excused from its obligations hereunder to the extent that such performance is thereby delayed or impossible.

10.2 On the occurrence of any Force Majeure Event, the Parties shall enter into bona fide discussions with a view to determining how to proceed in order to enable performance of the Goods, to the extent possible, to be restored.

10.3 If at any time the Seller claims the existence of a Force Majeure Event in respect of its obligations under the Contract, the Buyer shall require the Parties to enter into discussions as to the manner in which the force majeure event will be overcome and the Parties shall use all reasonable endeavours to reach an agreement as to the manner in which the force majeure event will be overcome.

10.4 The Seller reserves the right upon notice to the Buyer at least 14 days before the Delivery Date to allocate its product resources as it in its reasonable discretion shall decide in connection with the Force Majeure Event.

11.1 The Seller will be entitled to terminate the Contract immediately upon the occurrence of any of the following:

(a) the Buyer being in material breach of any term of these Conditions and such breach not being capable of remedying;

(b) the Buyer being in material breach of any term of these Conditions and failing to remedy such breach within 14 days of notice by the Seller requiring it to be remedied;

(c) the Buyer (being an individual or firm) becoming bankrupt or going into liquidation, or (being a company) being wound up by the court or voluntarily winding up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the Buyer enters into any involuntary or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with or for the benefit of the general body of creditors of the individual, the partnership or the company;

(d) the Buyer suffers the equivalent of any similar or analogous event in (c) above (in any jurisdiction);

(e) a separate entity acquires Control of the Buyer, or the Buyer is merged with a separate entity.

12 CONFIDENTIALITY

12.1 The Buyer undertakes not at any time to divulge any of the terms of the Contract or use any information in relation to the Seller's business or any other information received from the Seller in connection with the Contract or the subject matter of the Contract or any part of such information other than for the purposes approved by the Seller.

13 OWNERSHIP AND CONTROL OF INTELLECTUAL PROPERTY

13.1 The ownership and security rights to own the ownership of all Intellectual Property Rights relating to the Goods shall vest in the Seller or its licensor or licensor of the Seller in the Seller and the Seller will be responsible for the registration and other protection of such Intellectual Property Rights in the Goods and/or Seller.

13.2 The Buyer will not use the Seller's name, logo or any other identification marks for the purpose of advertising or publicity.

13.3 If the Goods have been manufactured to the specification or design of the Buyer, the Buyer shall indemnify the Seller and the Seller shall be relieved of any liability to the Buyer and against all losses, damages, costs, claims, demands, expenses and fees (including, without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered in respect of any infringement of any Intellectual Property Rights of any third party where such liability arises in connection with any infringement of any Intellectual Property Rights of the Goods.

14 INDEMNITY

14.1 Without prejudice to any rights or remedies implied by statute or common law or under any provision of these Conditions of the Contract, the Buyer shall indemnify the Seller and keep the Seller indemnified from and against all losses, damages, costs, claims, demands, expenses and fees (including, without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered in respect of any infringement of any Intellectual Property Rights of any third party where such liability arises in connection with any infringement of any Intellectual Property Rights of the Goods.

15 HEALTH AND SAFETY

15.1 Goods supplied by the Seller to its own specification or design are designed to be safe and without risk to health provided they are used in accordance with the instructions and warnings of the Seller. In this regard, the Buyer shall ensure that the Seller is so notified by the Buyer as to their use and are also used with any necessary safety precautions. If the Buyer is unclear as to the correct use of the Goods, the Seller will provide a clarification. It is the responsibility of the Buyer to meet all safety standards in the application, use and sale of the Goods.

16.1 The Seller does not make or give any representation or warranty that the Goods are or will be compliant with the requirements of REACH (the Registration Evaluation Authorisation and Restriction of Chemicals Regulation 2006). Any representation, warranty or other statement relating to the subject matter of the Contract, other than that made by the Seller, is expressly excluded to the fullest extent

17 Each Party will be responsible for all the costs and expenses incurred in it in connection with and incidental to the preparation and completion of each Contract.

18 RELATIONSHIP OF PARTIES

18.1 Nothing in these Conditions or any document referred to in either document or any arrangement contemplated by the Parties shall be construed so as to create any partnership, agency relationship or joint venture between the Parties. In no event shall any such representation, warranty or other statement be binding on the Seller. No waiver, or any other action or inaction, of any party shall be given effect to in law, unless in writing.

19 AMENDMENTS AND VARIATIONS

19.1 No variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

20 WAIVERS

20.1 No waiver, in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall be deemed to be a waiver of any other right or remedy to which the Seller may be entitled under the Contract or these Conditions.

21 ASSIGNMENT

21.1 The Seller shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract on its behalf as if it were exercising or performing such obligations or rights itself.

22 SEVERITY

22.1 If any of these Conditions or any provision or part or any of these Conditions is held by any court of competent jurisdiction to be invalid or unenforceable or ineffective for any reason:

23 DISPUTE RESOLUTION

23.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Contract or any breach of this Contract or any breach of the obligations of the Buyer or the Seller.

24.1 These Conditions and the acknowledgement of Purchase Orders represent the entire agreement between the Parties relating to the sale and purchase of the Goods and/or Services.

25 NOTICE OF TERMINATION

25.1 Notices under these Conditions may be served by personal delivery, by first class post or by facsimile.

26 CONTRACTS (Rights of Third Parties) ACT 1999

26.1 An entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract or to require the Seller or the Buyer to perform any of its obligations under the Contract.

27 Governing Law

27.1 These Conditions and the Contract shall be governed by English law and subject to the provisions of Clause 23 the Parties hereby agree to submit to the English Courts.

28.1 The Seller shall have the right to require the Buyer to ensure that the Buyer at the Buyer's sole cost and expense shall have that the Seller may elect to bring proceedings in the country where the Buyer is incorporated.