

## TERMS AND CONDITIONS OF PURCHASE

### 1. DEFINITIONS

**"Affiliate"**: as regards a party, its ultimate holding company and each company or person: (a) in which that ultimate holding company either directly or indirectly owns: (i) 50% (fifty percent) or more of the entire issued share capital; or (ii) a majority of the voting rights; or (b) over which that ultimate holding company either directly or indirectly has the power to secure the manner in which the company's or person's affairs are conducted (and where "indirectly" means through a chain of ownership or control, of the sort described in (a) or (b), which links the ultimate holding company to the company or person concerned);

**"Applicable Incoterms® Rule"**: the Incoterms® 2010 rule stated in the Order (or, if none is stated or otherwise agreed in writing by the parties, DAP) including the named place or port (and terminal at port, if any) specified in the Order (or otherwise agreed in writing by the parties);

**"Applicable Laws"**: all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal, together with all codes of practice having force of law, statutory guidance, regulatory policy or guidance and industry codes of practice (as amended from time to time). For the avoidance of doubt, **"Applicable Laws"** includes without limitation the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any applicable local laws;

**"Applicable BAT Policies"**: the Supplier Code of Conduct, Standards of Business Conduct, Principles of Engagement and any other policies applicable in BAT (including changes and additions) as may be amended from time to time;

**"Buyer"**: the person, company or entity that places the Order;

**"Buyer Materials"**: any equipment, tools, specifications, artwork, designs, reports, inventions, documents or other materials in any media made available to Seller by Buyer and/or any of its Affiliates in connection with the Contract and all IPR in such materials;

**"Candidate List"**: means the Candidate List of substances of very high concern for Authorisation published in accordance with REACH and as amended from time to time;

**"CLP"**: the Regulation (EC) No 1272/2008 on classification, labelling and packaging (CLP) of substances and mixtures, as amended from time to time;

**"Confidential Information"**: any information concerning the business affairs, operations, technology, know-how, customers, suppliers, products, pricing or Personnel of either party which is either expressly indicated to be confidential or which any reasonable commercial person would be expected to regard as confidential and which either party may from time to time receive or obtain in any form as a result of entering into, or performing its obligations pursuant to, the Contract;

**"Conditions"**: these terms and conditions of purchase which constitute an integral and inseparable part of the Order;

**"Contract"**: has the meaning given to it in Condition 2.3 or 2.4, as applicable;

**"Controller"**: has the same meaning as in the GDPR (as amended from time to time);

**"Data Protection Legislation"**: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**"); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

**"Deliverables"**: all artwork, ideas, inventions, documents, designs, specifications, reports, computer software and other work products and materials developed or supplied by Seller as part of or in relation to the supply of the Goods or the Services at the Sites or described in the Order;

**"Delivery Date"**: the date or dates of delivery of the Goods and/or provision of Services as set out in Order, or as notified by the Buyer to Seller from time to time;

**"Dispute"**: any dispute, disagreement or claim arising out of or in connection with the Contract, its subject matter or formation (including without limit non-contractual disputes, disagreements and claims);

**"Effective Date"**: the commencement date of the Conditions as stipulated in the Order;

**"Goods"**: the goods described in the Order (including without limit any Deliverables developed or supplied as part of or in relation to the Goods) or to be supplied as part of the Services and including without limit any instalment or part of them and all substances, preparations, articles and all single substances contained in preparations and articles (where "substance", "preparation" and "article" have the meaning given in REACH);

**"IPR"**: all patents, copyright and related rights, design rights, trade or service marks, domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, database rights, rights in confidential information (including without limit know-how and trade secrets) and all other intellectual and industrial property rights, whether registered or unregistered, including without limit all applications, renewals or extensions, and all similar or equivalent rights or forms of protection which exist in any part of the world;

**"Order"**: a purchase order for Supplies placed by Buyer with Seller, as referred to the agreed quotation of the Cost by the Parties or any other documents which includes detail information of the order and specification of the Cost. The Order may be amended from time to time as agreed by the Parties;

**"Personal Data"**: has the same meaning as in the GDPR (as amended from time to time);

**"Personnel"**: any officer, directors, employee, contractor, temporary/casual worker, third party supplier, subcontractor, shareholders, representatives or agent of the person concerned;

**"Price"**: the price payable for the Supplies as stated in the Order;

**"Processor"**: has the same meaning as in the GDPR (as amended from time to time);

**"Public Official"**: includes, without limitation, any person holding or acting on behalf of a person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a public enterprise or a public international organisation, any political party or an official thereof or any candidate for any political office, any Personnel of any government or any department, agency, or part thereof, or of any state owned enterprise or joint venture/partnership with a state owned enterprise (including a partner or shareholder of such an enterprise) or of a public international organisation, or any person acting in an official capacity for or on behalf of any such government or department, agency, or part thereof, or for or on behalf of any such public international organisation, or a relative or Personnel of any such person;

**"REACH"**: Regulation 1907/2006/EC concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as amended from time to time and all related official guidance documents;

**"Sales Tax"**: value added tax and any other tax based on sales of goods or services such as sales taxes and any similar, replacement or additional tax;

**"Sanctions"**: any sanctions administered or imposed by the United Nations, the European Union, the US Department of Treasury, the UK HM Treasury or any other body (governmental or otherwise) and any applicable law or regulation relating to sanctions (as amended from time to time);

**"SDS"**: a safety data sheet compiled where necessary and in accordance with Article 31 and Annex II of REACH;

**"Seller"**: the person, company or entity from whom Buyer purchases Supplies, as identified in the Order;

**"Services"**: the services described in the Order (including without limit any Deliverables developed or supplied as part of or in relation to the Services);

**"Sites"**: the location(s) where the Goods and/or Services are to be delivered and conducted as specified by the Buyer from time to time;

**"Specification"**: the description or specification of the Supplies referred to in the Order or otherwise agreed by Buyer and Seller (including without limit any product specification and any technical parameters);

**"Supplies"**: the Goods, Services and Deliverables which are the subject of, or are to be supplied in connection with, the Order;

**"Term"**: term of the Contract, commencing as of the Effective Date until and including the date as stipulated in the Order;

**"Valid Invoice"**: an invoice that satisfies each of the following requirements: (a) it is sent by Seller and received by Buyer in such form and by such method as specified by Buyer; (b) it is received by Buyer no later than during the first calendar week of the month following the month in which it is dated; (c) it is received by Buyer no later than 6 (six) calendar months following the date on which the supply of Supplies was completed; and (d) it includes: (i) a reference to the Contract; (ii) Buyer's Order number to which it relates; (iii) a short description of the Supplies supplied; (iv) the Price (or relevant instalment of the Price) for the Supplies being charged; (v) the Terms to which it relates; (vi) Seller's Sales Tax registration number or equivalent; (vii) the applicable Sales Tax rate and amount; and (viii) any other requirements made known by Buyer to Seller. This Valid Invoice must be supported with the correct and complete documents as required by Buyer;

**"Working Day"**: any day which is not a weekend day or a public or bank holiday in the place stated in Seller's address in the Order.

### 2. BASIS OF CONTRACT

- 2.1. Buyer and Seller shall be bound by the Order if: (a) Seller accepts it within 2 (two) Working Days of the date stated on the Order; or (b) Seller does anything consistent with, or implying, acceptance of the Order, or does not reject the Order, within 2 (two) Working Days of the date stated on the Order, and if (a) or (b) applies Seller will be deemed to have accepted unconditionally the Order and these Conditions. Buyer and Seller shall not be bound by a purchase order from Buyer for Supplies unless it is placed (including without limit by electronic transmission) by Buyer with Seller on Buyer's purchase order form from time to time.
- 2.2. Buyer may, without liability, by notice to Seller, cancel with immediate effect any Order (or any instalment) in whole or in part at any time before Seller accepts or is deemed to accept it.
- 2.3. Subject to Condition 2.4, where Seller accepts or is deemed to accept the Order: (i) Seller shall supply the Supplies in accordance with the Contract; and (ii) these Conditions, together with the Order and any Specification, shall constitute the entire agreement between the parties in relation to the Supplies and be deemed to be the **Contract**, to the exclusion of any other terms and conditions that Seller seeks to impose or incorporate (whether or not Buyer subsequently communicates that to Seller) or which are implied by trade, custom, practice or course of dealing.
- 2.4. Where the Order is placed under a separate negotiated written agreement (a "**Negotiated Agreement**"), unless it states otherwise, the Negotiated Agreement, together with these Conditions, the Order and any Specification, shall constitute the entire agreement between the parties in relation to the Supplies and be deemed to be the **Contract**, to the exclusion of any other terms and conditions that Seller seeks to impose or incorporate (whether or not Buyer subsequently communicates that to Seller) or which are implied by trade, custom, practice or course of dealing.
- 2.5. If there is any conflict or inconsistency in or between a Negotiated Agreement, these Conditions, an Order, a Specification or the Applicable Incoterms® Rule (together the

"Contract Documents"), the Contract Documents shall be applied in the following descending order of precedence: first (a) the Negotiated Agreement; then (b) the Order; then (c) the Specification; then (d) these Conditions; and then (e) the Applicable Incoterms® Rule. However, Condition 5.6 shall take precedence over the Order and the Specification where it would extend the period for payment of a Valid Invoice.

- 2.6. A variation to the Contract shall only be valid if it is in writing and is approved in writing by a duly authorised Buyer representative. Signing a delivery note shall not constitute a valid variation or the acceptance of any terms or conditions of Seller.

### 3. DELIVERY

- 3.1 Unless otherwise agreed in writing by the parties, the Delivery Date for the supply of the Supplies is as stated in the Order. If there is no such date in an Order, Seller shall request one from Buyer; the date provided by Buyer will be deemed the date of supply in the Order. The dates and times for supply are of the essence of the Contract. If Seller fails to supply any Supplies in accordance with the Contract by their due date:
- (a) Seller will bear all costs, charges, damages, losses and expenses suffered or incurred by Buyer and any of its Affiliates arising out of or attributable (in whole or in part) to Seller's failure (including without limit any costs for re-supply to the correct Sites or for storage or demurrage). The compensation fee for any delay of Goods and Services is 0,1% (zero point one percent) of the Price of each day delay which maximum compensation is 5% (five percent) of the Price; and
  - (b) Buyer may, at its sole option: (i) accept Supplies but make a proportionate reduction in the Price; (ii) by notice, terminate the Contract with immediate effect in respect of Supplies not yet supplied; (iii) return any Supplies already supplied under the Contract at Seller's risk and expense; (iv) require the Supplies to be re-supplied to the correct Sites; and/or (v) have any advance payments made for Supplies that have not yet been supplied immediately returned by Seller.
- 3.2 Buyer shall not be deemed to have accepted any Supplies until it has had a reasonable time to inspect them following supply or, if later, within a reasonable time after any latent defect in them has become apparent.
- 3.3 Where Supplies may be supplied in instalments, they may be invoiced and paid for in instalments. Failure to supply any one instalment on time or at all or any defect in an instalment shall entitle Buyer to the remedies in Condition 3.1 and 7.3.
- 3.4 Seller shall deliver to Buyer an ASN (Advanced Shipping Notification), in a format agreed by the parties, by the "Latest ASN Confirmation Date" in the Order or, if none is stated, by such other time requested by Buyer.
- 3.5 All Goods and Deliverables shall be properly packed and secured by Seller to enable them to reach their destination in good condition and be accompanied by all relevant shipping and delivery documentation (including without limit consignment notes and bills of lading) specifying them, the Order number, any special storage instructions and, where applicable, the outstanding balance of Goods and Deliverables still to be supplied.
- 3.6 Seller shall ensure that any hazardous Goods have prominent and suitable warnings on all containers, packages and documents, and that such markings comply with all relevant requirements of any Applicable Laws. Prior to supplying any hazardous Goods, Seller shall supply Buyer with all relevant data relating to their hazardous nature and shall promptly update such data from time to time as additional data comes into Seller's possession.
- 3.7 Unless otherwise stated in the Contract, Seller shall deliver the Goods and Deliverables in accordance with the Applicable Incoterms® Rule. Seller shall comply with all of its obligations under the Applicable Incoterms® Rule. Services shall be supplied at the place stated in the Order.

### 4. QUALITY & DESCRIPTION

- 4.1 Seller during the Term of this Contract warrants and undertakes to Buyer and each of its Affiliates that:
- (a) the Supplies shall conform as to quantity and description with the Contract;
  - (b) the Supplies shall be supplied with all the due diligence, care and skill to be expected of a properly qualified and experienced person in Seller's profession or business in delivering goods and performing services of a similar type, scope, complexity and purpose;
  - (c) Goods and Deliverables shall be supplied using best quality goods, materials, standards and techniques;
  - (d) Goods and Deliverables shall be free from defects in design, installation, materials and workmanship and remain so for at least 12 (twelve) months (or for such other period(s) agreed in writing by the parties) after the Delivery Date of Goods to Buyer, and for Deliverables, Seller shall provide after services guarantee for duration as agreed on the Order by the Parties;
  - (e) the Supplies shall be of satisfactory quality and fit for any purpose specified in the Contract and in this respect Buyer relies on Seller's skill and judgement;
  - (f) Goods and Deliverables shall be free of any foreign odour;
  - (g) the Supplies shall be free for use and/or adaptation by Buyer and any of its Affiliates without infringing any third party rights or breaching any Applicable Laws or restriction (whether it be in any Applicable Laws, contract or elsewhere);
  - (h) the Supplies shall comply as to design, construction, composition and quality with all relevant requirements of any Applicable Laws and conform to any trade description applied by Seller;
  - (i) wherever practicable, Goods and Deliverables shall be constructed and packaged using environmentally friendly and reusable/recyclable material; and
  - (j) where applicable, Goods and Deliverables shall be capable of running on Buyer's and its Affiliates' equipment.
- 4.2 Seller shall:
- (a) co-operate with Buyer in all matters relating to the Supplies and comply with all reasonable instructions of Buyer;
  - (b) ensure that at all times it has and maintains all licences, permissions, authorisations, consents and permits reasonably necessary to perform the Contract;
  - (c) comply with the Applicable BAT Policies and are notified to it or available at [www.bat.com/principles](http://www.bat.com/principles);
  - (d) retain Personnel in sufficient numbers to ensure that its obligations are fulfilled in accordance with the Contract;
  - (e) provide all equipment, tools and vehicles and such other items as are required to supply the Supplies; and
  - (f) comply, and procure that its Personnel and Affiliates comply, with all Applicable Laws (including without limit Environmental, Health, and Safety policies during the Personnel are on the Buyer's Sites and Applicable Laws relating to anti-bribery, anti-corruption and anti-tax evasion) in relation to the Contract.

### 5. PRICE AND PAYMENT

- 5.1 The Price is exclusive of Sales Tax but inclusive of all other charges (including without limit insurance, storage, packing, despatch, shipping, excise and import/export duties), unless varied by the Order and subject to Applicable Laws. No extra charges shall be effective unless agreed with Buyer in writing. If a currency stipulated in the Order ceases to be legal tender, Buyer may use any reasonable replacement currency and exchange rate to re-establish the Price.
- 5.2 Sales Tax, where applicable, shall be payable by Buyer subject to delivery to Buyer of a valid Sales Tax invoice.
- 5.3 Seller shall maintain complete and accurate records of the time spent and materials used by Seller in providing the Supplies, and Seller shall allow Buyer and its nominees to inspect such records at all reasonable times on request.
- 5.4 Neither the Price nor any instalment of it agreed by the parties shall be payable for Supplies until they have been supplied and meet the Buyer's standard requirement in all respects in accordance with the Contract and until Seller has submitted all relevant Valid Invoices and supporting documents in correct and complete, including the signed of minutes of Services completion by the Parties in respect of the Price (or any instalment) in accordance with the Contract. The only invoices that Buyer may be obliged to pay are Valid Invoices.
- 5.5 Unless agreed otherwise in writing by the Parties and mentioned on the Order, Buyer will pay a Valid Invoice within the period as determined in the Order after the date of Valid Invoice and the supporting correct and complete documents have been received (or if later, in which the Buyer receives the Supplies), subject to Condition 5.6. The payment shall be made by Buyer to a registered bank account of Seller as referred vendor registration document.
- 5.6 Seller acknowledges and accepts that Buyer's payment processing centres (and those of its Affiliates) operate a fortnightly payment run system on every Thursday and that, if the final day of any period for payment (whether established by the Order or Condition 5.5) of a Valid Invoice falls after the fortnightly payment run day on (or in respect of) Thursday in the relevant week, then the period for payment shall be deemed extended to and including the following fortnightly payment run day.
- 5.7 Buyer may set off against the Price (including without limit any instalment of it) and against any Valid Invoice any sum owed by Seller to it and/or any of its Affiliates. Seller will request an Order number from Buyer for any proposed invoice where Seller does not have one. Seller irrevocably waives the right to payment of any sums not included in a Valid Invoice.
- 5.8 Should Buyer be required by Applicable Laws to make any deduction on account of tax or otherwise on any sum payable under the Contract, Buyer may deduct or withhold such amount from such payment, remit the amount to the proper revenue or other authority and (if possible) furnish Seller with an official receipt evidencing such remittance. Where any payment is made pursuant to an indemnity and that sum is subject to a charge to taxation in the hands of Buyer the sum payable shall be increased to such a sum as will ensure that, after taxation, Buyer shall be left with the sum that it would have received in the absence of any such charge to taxation.
- 5.9 The term "Tax" when used in an Order has the meaning given to Sales Tax in Condition 1.

### 6. PASSING OF PROPERTY AND RISKS

- 6.1 If Goods or Deliverables are specifically identifiable upon manufacture as Buyer's, ownership in them shall pass immediately to Buyer upon manufacture. Otherwise, ownership shall pass to Buyer on delivery being completed in accordance with the Applicable Incoterms® Rule unless payment for the Goods or Deliverables is made before delivery, when ownership shall pass to Buyer once payment is made. Seller shall keep Goods and Deliverables which are Buyer's property separate from any other goods in its possession and shall mark them as being Buyer's property.
- 6.2 Risks in all Goods and Deliverables shall pass to Buyer when their delivery is completed in accordance with the Applicable Incoterms® Rule.

### 7. ACCEPTANCE AND REJECTION

- 7.1 If so required by Buyer, Seller shall submit samples of the Goods and Deliverables for Buyer's approval before the Goods and Deliverables the subject of the Order are supplied. Such samples shall be marked for identification by Seller and may be retained by Buyer at no cost to Buyer.
- 7.2 Buyer may inspect and test Supplies any time before supply including without limit during manufacture, processing or storage. Seller shall facilitate such inspection and

- testing as reasonably required which shall not amount to acceptance of the Supplies. If Buyer informs Seller it believes Supplies and/or production or storage facilities do not comply with the Contract or are unlikely upon completion of manufacture or processing so to comply, Seller shall promptly take such steps and undertake any such remedial action as may be necessary to ensure such compliance and Buyer may conduct further inspections and tests after Seller has carried out remedial action.
- 7.3 If Supplies are not in accordance with the Contract, whether at the time of supply or performance or subsequently, and/or if Seller breaches any warranty or undertaking given by it, and regardless in any case of whether the Price for them has been paid, Buyer may:
- (a) reject the Supplies (in whole or in part), whether or not (in respect of Goods and Deliverables) title has passed, and return them to Seller at Seller's own risk and expense;
  - (b) require Seller, at Seller's cost, immediately (unless Buyer agrees otherwise in writing) to repair the Supplies or supply replacement Supplies so that they satisfy the requirements of the Contract;
  - (c) at Buyer's sole option, treat the Contract as discharged and recover from Seller any part of the Price which has been paid;
  - (d) refuse to accept any subsequent delivery of Supplies which Seller attempts to make;
  - (e) recover from Seller any expenditure incurred by Buyer and/or any of its Affiliates in destroying or procuring the destruction of any such Supplies and/or in obtaining substitute goods, services and/or deliverables; and/or
  - (f) claim damages for any costs, losses, charges or expenses incurred by Buyer and/or any of its Affiliates arising from Seller's failure to supply the Supplies in accordance with the Contract.
- 7.4 Any right of Buyer to terminate the Contract (in whole or in part) and any right set out in Condition 7.3 includes, without limit, a right for Buyer to require Seller to collect Goods and Deliverables and take them away (including without limit obtaining all required export and import licences and other official authorisations and carrying out all customs formalities) at Seller's own risk and expense.
- 7.5 These Conditions shall extend to any substituted, remedial, repaired or replacement goods, services and deliverables supplied by Seller.

## 8. COMPLIANCE WITH REACH AND CLASSIFICATION, LABELLING AND REGISTRATON LAWS

- Without prejudice to the applicability of this Condition 8 in other circumstances, this Condition 8 is deemed to apply if the Buyer is incorporated in the European Union (EU) or if any of the Goods are intended for use in a product that is to be sold in the EU.
- 8.1 Seller shall fully comply with REACH, and shall ensure that all Goods supplied to Buyer fully comply with REACH. Any non-compliance of Seller or Goods with REACH shall constitute a material breach of these Conditions and Buyer may, by notice to Seller, terminate the Contract with immediate effect without further liability on the part of Buyer in any such circumstance.
- 8.2 For the purposes of such compliance Seller shall, without limit: (a) register any substances in a timely manner and fully in accordance with REACH; or (b) if Seller is not established in the European Community, Seller shall appoint and maintain a representative to undertake such registration and notify Buyer of the representative's contact details (and any replacement representative's contact details).
- 8.3 If Seller or Seller's representative fails to make an application to register a substance no later than 12 (twelve) months before expiration of the registration deadline, Buyer may, by notice to Seller, terminate the Contract with immediate effect without further liability on the part of Buyer.
- 8.4 Seller warrants that the Goods shall not contain substances that are subject to authorisation under Annex XIV of REACH except where Seller has provided documentary evidence to Buyer of an Agency authorisation for the use intended by Buyer (where "Agency" has the meaning given to it in REACH).
- 8.5 Whenever Buyer notifies Seller in writing of an intended use of the Goods, Seller shall include, or procure the inclusion of, that use as an identified use in the technical dossier when completing a registration or, if Buyer's notice is given after registration, Seller shall update, or procure an update of, the registration as necessary and in each case shall provide Buyer with, or procure the provision to the Buyer of, documentary evidence that this has been done.
- 8.6 Any Buyer request to include a use shall include the information required under Article 37 (2) of REACH.
- 8.7 Seller may (acting reasonably and in good faith) refuse to include, and may refuse to procure the inclusion of, a use as an identified use only for reasons of protection of human health or the environment as provided for under Article 37 (3) of REACH and shall provide Buyer with written reasons for such refusal.
- 8.8 If Seller refuses to include a use as an identified use, Buyer may, by notice to Seller, elect to either:
- (a) conduct its own chemical safety assessment (in which case Seller shall provide Buyer with such information relating to the relevant substance as is reasonably requested by Buyer); or
  - (b) terminate the Contract with immediate effect without further liability on the part of Buyer.
- 8.9 Seller shall provide Buyer with any SDS relating to the Goods prepared under Article 31 (1) of REACH upon the first delivery of the Goods at the latest and thereafter, upon any subsequent delivery of Goods to Buyer, Seller shall provide Buyer with an updated SDS for any such Goods and for any other Goods delivered to Buyer by Seller in the previous 12 (twelve) month period.
- 8.10 Seller's obligation to provide SDSs shall apply notwithstanding that the legal obligation is limited to Buyer's request; such a request shall be constituted by this Condition.
- 8.11 The accuracy and adequacy of all information contained in any SDS shall be Seller's sole responsibility and Buyer shall have no obligation whatsoever to review the accuracy or adequacy of the information.
- 8.12 Seller shall immediately notify Buyer in writing of any change in the legal status of the Goods under REACH and in such circumstances Seller shall take all necessary steps to ensure compliance with REACH in accordance with the above provisions.
- 8.13 If the Candidate List is updated, the Seller must review all Goods purchases made by the Buyer during the 12 (twelve) month period immediately preceding the update and promptly inform the Buyer of the presence of any substances of very high concern listed on the updated Candidate List that would have been in Goods so purchased by the Buyer.
- 8.14 The Seller must comply with Annex 8 to CLP in respect of any countries notified by Buyer to the Seller.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The IPR in any Deliverables shall belong to Buyer upon creation or production as applicable. Seller will assign (and to the extent possible hereby assigns) all its rights, title and interest in the IPR in such Deliverables free from any charges, legal burdens, restrictions or third party rights to Buyer immediately upon creation and without cost. Seller warrants to Buyer that the use of the Supplies by Buyer and/or any of its Affiliates will not infringe any third party's rights.
- 9.2 Seller shall promptly at Buyer's request, and at Seller's expense, do all such further acts and things and execute all such other documents as may be necessary to vest fully and completely in Buyer the IPR assigned or to be assigned under Condition 9.1. Seller shall procure the waiver of any moral rights in any Deliverables created by its Personnel in the performance of or in connection with the Contract.
- 9.3 Seller grants to Buyer and its Affiliates a royalty-free, worldwide, non-exclusive, perpetual, irrevocable, transferable and sub-licensable licence to use any IPR which are owned by or licensed to Seller or are developed by it, and which are not assigned to Buyer under Condition 9.1, where that licence is required by Buyer in order to fulfil the purposes for which the Supplies were bought. Seller acknowledges that Buyer and its Affiliates may use, modify, exploit, distribute and otherwise deal with all Deliverables and Services freely and at Buyer's absolute discretion anywhere in the world.
- 9.4 Seller shall not without Buyer's prior written consent use any trademarks, logos, initials or other indicia of Buyer and/or any of its Affiliates nor sell any goods which bear them.

## 10. BUYER MATERIALS

- 10.1 All Buyer Materials belong to Buyer or its Affiliates. Seller shall have no rights in any Buyer Materials, and shall not dispose of, use or make available Buyer Materials, other than in accordance with the Contract and as strictly necessary to perform Seller's obligations under the Contract (but subject to Condition 13).
- 10.2 Until they are returned to Buyer, Seller is responsible for any loss or damage to Buyer Materials and shall keep them safe, insured against all insurable risks and maintain them in good condition. Seller shall return all Buyer Materials on the completion of the Contract or at such other times as Buyer may require.

## 11. INDEMNITY AND INSURANCE

- 11.1 Seller shall indemnify and keep indemnified Buyer and all of its Affiliates on demand and without counterclaim against all liabilities, costs, losses (whether direct or indirect), damages, claims and expenses (including without limit any interest, fines, legal and other professional fees and expenses) suffered or incurred by Buyer and/or any its Affiliates arising out of or attributable (in whole or in part) to:
- (a) any claim by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Supplies which are attributable to the acts or omissions of Seller or its Personnel;
  - (b) any claim by a third party arising out of, or in connection with, a breach of the Contract or negligent performance or failure or delay by Seller or its Personnel;
  - (c) any breach of Condition 4.1, 4.2(c), 4.2(d), 4.2(g), 8, 9, 13, 14 or 16.6 including without limit any breach of the warranty in Condition 9.1;
  - (d) any infringement or alleged infringement of any Applicable Laws relating to the quality, marking, labelling, safety or use of the Goods or Deliverables; and
  - (e) any damage to the property of Buyer or its Affiliates caused by any Supplies.
- 11.2 Seller shall maintain (at its own expense) such insurance: (a) as required by Applicable Laws; and (b) against its relevant potential liabilities in connection with the supply of the Supplies (including without limit for such period as would be expected of a prudent supplier seeking to act in accordance with good industry practice, the Contract and Buyer's reasonable requirements).

## 12. TERMINATION

- Without prejudice to any other rights and remedies of Buyer or its Affiliates, Buyer may, on its sole discretion, by notice to Seller, terminate the Contract with immediate effect:
- 12.1 in whole or in part, for convenience, provided that where the Contract is formed under Condition 2.1(a) (only) Buyer shall pay Seller the Price for all Goods and Deliverables allocated by Seller to the Contract that may not reasonably be allocated by it to another contract or returned to stock and a reasonable price (to be determined by Buyer) for any other work reasonably done in fulfilling the Contract before termination (provided in all cases that any such Price is otherwise payable according to the Contract and that

- Seller allows Buyer to take ownership of the Goods, Deliverables and work in progress for which it pays), and these Conditions shall otherwise apply to all such Goods, Deliverables and work in progress as they would do if the Contract had not been so terminated;
- 12.2 in the event of any material breach by Seller of the Contract, including but not limited to, non-compliance of Seller with any provision of the Contract or the Buyer's policies including where bribery or corruption are suspected;
- 12.3 in the event of breach or suspected breach of Conditions 4.2(c), 4.2(g) and 14;
- 12.4 if Seller has a receiver or administrative receiver appointed or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if Seller enters administration or gives notice of its intent to do so or enters into any voluntary arrangement with its creditors (or if Seller undergoes anything in any jurisdiction that is similar to something included in this Condition 12.4); and/or
- 12.5 if it appears to Buyer that Seller is or is likely to become unable to pay its debts or meet any of its contractual obligations or if Seller ceases or threatens to cease to carry on all or any material part of its business.

### 13. CONFIDENTIALITY

- 13.1 Subject to Condition 13.2, at all times during the Contract and for 5 (five) years thereafter, Buyer and Seller shall and shall each procure that its Personnel shall maintain in confidence (and not use) the other party's Confidential Information, other than as necessary to perform or in connection with the performance of the Contract.
- 13.2 Confidential Information shall exclude information and data which:
- (a) at the time of receipt is in the public domain, or subsequently becomes so through no fault of or breach of confidentiality by the recipient;
  - (b) is lawfully received by the recipient from a third party on an unrestricted basis;
  - (c) is already known to the recipient before receipt under the Contract;
  - (d) is required by any law, regulation, directive, statute, subordinate legislation, common law, civil code or any judgment, decision or order of a competent authority to be disclosed by the recipient provided that (to the extent permitted by the same) the disclosing party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the requirement to make the disclosure;
  - (e) is disclosed by the recipient with the prior written approval of the other party in accordance with the terms of such written approval; or
  - (f) is disclosed, Processed or used as contemplated by Condition 16.7.
- 13.3 Seller and Buyer shall each ensure that disclosure of Confidential Information is restricted to those of its Personnel who need access to it for the purposes of the Contract.
- 13.4 Seller shall not, and shall procure that its Personnel shall not, disclose the fact or subject matter of the Contract or its relationship with Buyer unless it first obtains Buyer's written consent or unless that disclosure is made under Condition 13.1.

### 14. DATA PROTECTION

Each shall comply with its obligations under the Data Protection Legislation. BAT and Seller agree that each party is an independent data controller of business to business contact personal data exchanged in the context of the commercial relationship. If either party becomes a processor instructed by the other as a Controller of any personal data then the parties shall enter into a data processing agreement in accordance with Article 28 of the GDPR. For those individuals employed by Seller or sole traders a copy of BAT's Privacy Notice is available at <https://www.bat.com/privacy>.

### 15. RECORDS, REPORTS AND AUDIT

- 15.1 Seller shall keep complete, accurate and up to date records of all time spent, materials used and principal activities carried out, and other material information generated in connection with the Contract and provide (at no cost) to Buyer copies of such records and reports where reasonably requested by Buyer. Such records shall be retained by Seller for inspection by Buyer for the term of the Contract and 7 (seven) years thereafter.
- 15.2 Buyer, its authorised advisers, other representatives and any regulatory body may audit the compliance of Seller and of each of Seller Personnel with the terms of the Contract and the accuracy of Seller's invoicing of the Charges. For the purpose of facilitating an audit, Seller shall provide to Buyer (including its authorised employees), its authorised advisers and other representatives, and any regulatory body, on request (at no cost to Buyer):
- (a) reasonable access to the records referred to in Condition 15.1;
  - (b) reasonable access to all relevant information, premises, data, employees, agents, subcontractors and assets at all locations at which the same are present, including locations from which obligations of Seller are being or have been carried out; and
  - (c) all reasonable assistance in carrying out any audit.
- 15.3 This Condition 15 shall remain in full force and effect for 7 (seven) years after the Contract expires or terminates (whichever applicable).

### 16. GENERAL

- 16.1 Seller shall not assign, transfer, charge, sub-contract or deal in any other manner with any of its obligations under the Contract without the prior written approval of Buyer. Seller will remain fully responsible for the performance of any obligations under the Contract which it sub-contracts to other parties. Seller shall ensure that appointed sub-contractor shall fully comply with these Conditions.
- 16.2 Any notice given by either party to the other under these Conditions shall be in writing, addressed to that other party at its registered office or principal place of business or such other address (including without limit an email address) as may have been notified to the party giving such notice and may be delivered by hand or sent by first class post, email or facsimile (except that delivery of a notice in relation to any proceedings or other documents in any legal action or any arbitration or any other method of dispute resolution shall not be carried out by email or facsimile).
- 16.3 Buyer may perform any obligation or exercise any right under the Contract by itself or through any of its Affiliates acting as its agent. Rights of Buyer and its Affiliates under the Contract are in addition to any other rights and remedies Buyer or its Affiliates may have.
- 16.4 Buyer and its Affiliates may enforce the rights, indemnities and warranties given in favour of Buyer and/or its Affiliates in these Conditions. Otherwise, a person who is not a party to the Contract has no right to enforce any of its terms under any provision in any law, regulation, directive, statute, subordinate legislation or civil code specifically created or brought into force to confer on third parties the right to enforce terms of contracts to which they are not parties, but this does not affect any right or remedy of a third party which exists or is available apart from such a provision.
- 16.5 Seller and Buyer may terminate or vary the Contract or any part of it without the consent of any person who is not a party to the Contract.
- 16.6 Seller shall immediately notify Buyer if Seller or any of its Personnel or Affiliates breaches or is affected directly or indirectly by Sanctions (which shall include but is not limited to becoming a "Specially Designated National", a "Designated Person" or designated in any way for any Sanctions purposes (a "**Seller Sanctions Event**")). If Buyer considers that Seller or any of its Personnel or Affiliates has exposed or may expose Buyer or any of its Affiliates to any risk of directly or indirectly breaching any Sanctions, Seller shall, if Buyer requires, engage with Buyer to agree how to continue the Contract without breaching any Sanctions. However, Buyer may terminate the Contract with immediate effect if there is a Seller Sanctions Event or Buyer considers one may occur.
- 16.7 Notwithstanding any other Condition, Buyer and its Affiliates (subject to Applicable Laws) may: (a) Process and otherwise use information (including without limitation Personal Data) received from or held about Seller to: (i) conduct due diligence and identity checks; and (ii) design, develop, test, demonstrate, provide training on and implement new (or changes to) systems, processes, functionality, operating models and business practices; and (b) engage contractors, third party suppliers, subcontractors and agents based in or outside the European Economic Area to carry out anything contemplated by (a) on their behalf.
- 16.8 No delay, failure or omission to enforce the Contract or any forbearance granted by Buyer and/or any of its Affiliates in respect of any obligation of Seller shall operate as a waiver unless the waiver is expressly set out by Buyer or the relevant Affiliate in writing. No waiver by Buyer or any of its Affiliates of any breach of an obligation of Seller under the Contract shall constitute a waiver of any prior or subsequent breach by Seller. No single or partial exercise of a right or remedy under the Contract shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.9 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, then it shall be severed and the validity and enforceability of the remainder of the Conditions shall continue in effect.
- 16.10 The Contract and any Dispute shall be governed by and construed in accordance with the law of The Republic of Indonesia, and (subject to the next sentence) each party irrevocably agrees that the courts of The Republic of Indonesia shall have jurisdiction to settle any Dispute. This Condition operates for the benefit of Buyer which retains the right to bring claims or enforce judgments against Seller in the courts of any competent jurisdiction. The United Nations Convention on the International Sale of Goods shall not apply to the Contract.
- 16.11 Seller at any time in fulfilling its rights and obligations under the Contract, shall be subjected to the laws and regulations that have an impact on the Contract, including but not limited to the Anti-corruption Law of Indonesia, UK Bribery Act 2010, U.S. Foreign Corrupt Practices Act and the implementation regulation and its amendment.
- 16.12 these conditions are made in both the Indonesian and English languages. in the event of any conflict or inconsistency between the two versions, the Indonesian text shall prevail.

### 17. ANTI-BRIBERY & CORRUPTION

- 17.1 Seller warrants and represents that:
- (a) in performing its obligations under this Contract neither it, nor any of its Personnel, will:
    - (i) directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give, receive or agree to offer, give or receive (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Contract which: (A) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (B) is made to or for a Public Official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (C) which a reasonable person would otherwise consider to be unethical, illegal or improper ("**Corrupt Act**"); or
    - (ii) breach any Applicable Laws or cause Buyer or its Affiliates to breach any Applicable Laws.

- (b) it has the requisite skill, knowledge and experience to perform its obligations under this Contract; and
  - (c) to the best of its knowledge and belief, neither it nor any of its Personnel has:
    - (i) engaged in any Corrupt Act prior to the date of this Contract;
    - (ii) been found by a court in any jurisdiction to have engaged in any Corrupt Act (or similar conduct);
    - (iii) admitted to having engaged in any Corrupt Act (or similar conduct); or
    - (iv) been investigated or been suspected in any jurisdiction of having engaged in any Corrupt Act (or similar conduct).
- 17.2 Seller further agrees and undertakes:
- (a) to notify Buyer immediately in writing if, at any time, it becomes aware that any of the representations set out in Clause 17.1 are no longer correct;
  - (b) to maintain, for a period of at least 7 (seven) years, complete, accurate and up to date records of all transactions which relate in any way to this Contract or to services provided Seller under it, including without limit all services provided and payments made or received;
  - (c) to read and at all times comply with the principles set out in the Applicable BAT Policies in respect of its performance under this Contract, and to notify Buyer immediately should it learn or have reason to know of any potential breach of the Applicable BAT Policies by it or its Personnel;
  - (d) to provide to Buyer reports on its activities under this Contract, in such format and at such frequency, as may be reasonably requested by Buyer;
  - (e) to notify Buyer immediately in writing if at any time it becomes aware of any Corrupt Act being requested by a third party or official in connection with the performance of this Contract.
- 17.3 All invoices issued in accordance with this Contract must contain a detailed breakdown of all work completed in relation to that invoice.
- 17.4 Save as disclosed in writing in advance to Buyer, neither Seller nor any of its Personnel or anyone in their families are: (i) Public Officials; (ii) Personnel of a customer or potential customer; or (iii) persons who might otherwise assert a corrupt or illegal influence on behalf of either Party.
- 17.5 Buyer may terminate this Contract with immediate effect on giving written notice to Seller if Buyer reasonably suspects Seller is in breach of this Clause 17 or of any Applicable Laws or Applicable BAT Policies.