

FARÉCLA PRODUCTS LIMITED – TERMS AND CONDITIONS OF SALE

1. Definitions and interpretation

1.1 In these Conditions:-

“Buyer” means the person whose order for the goods is accepted by the Seller.

“Conditions” means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with Condition 2.3.

“Contract” means the contract for the sale and purchase of the Goods.

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

“Seller” means Farécla Products Limited whose registered office is at Broadmeads, Ware, Hertfordshire, SG12 9HS.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Seller subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made by the Buyer.

2.2 Quotations issued to the Buyer by the Seller may be withdrawn or varied at any time and unless otherwise specified shall be automatically withdrawn after thirty (30) days. No binding contract shall in any event arise until the Buyer's written order has been accepted by the Seller and confirmed in writing by the Seller's authorised representative.

2.3 No variation of these Conditions shall be binding unless agreed in writing between the authorised representatives of the Seller and the Buyer.

2.4 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing for valuable consideration.

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

3. Orders

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

3.2 Subject to Condition 3.3, the quantity and type of the Goods shall be those set out in the Buyer's order (if accepted by the Seller).

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer (unless the Seller is itself in breach of contract) except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss, costs, damages, charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 The price of the Goods shall be the price in the Seller's quotation, or in the absence of a valid quotation, the Seller's price prevailing at the date of delivery of the Goods.

4.2 Prices listed or quoted are based on costs prevailing at the time when they are given or agreed. The Seller shall be entitled

to adjust the price of the Goods as at the time of delivery by such amount as may be necessary to cover any increased costs (direct or indirect) sustained by the Seller after the date of acceptance of the Buyer's order in connection with making, obtaining, handling, or supplying the Goods or otherwise resulting due to any change in delivery dates, quantities or specifications for Goods requested by the Buyer, or from any delay caused by instructions of the Buyer or failure of the Buyer to give the Seller accurate information or instructions.

4.3 Unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, loading, unloading, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax or any other tax arising from the sale, conversion or use of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

5. Payment Terms

5.1 Unless otherwise specifically agreed in writing by the Seller, the Buyer shall pay all invoices for the Goods in full by the 25th day of the month following the date of the invoice for the Goods. The time of payment shall be of the essence of the Contract.

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

(1) cancel the Contract or suspend any further deliveries to the Buyer;

(2) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

(3) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of four (4) per cent per annum over the base rate for the time being of the Bank of England (such interest being deemed to accrue from day to day and being compounded on the last day of each calendar month) until payment is made in full.

5.3 The Buyer may not withhold payment or make any set-off on any account (other than any admitted credit or overpayment or any prompt payment discount to which the Buyer is entitled).

6. Delivery

6.1 Delivery dates are based on the best judgement of the Seller at the time the quotation is given. Any changes in factory schedules by the time the order is received, any requests from the Buyer for changes, revisions and/or approvals of/to specifications, or any other cause outside the reasonable control of the Seller (including but not limited to industrial disputes) may alter the quoted delivery time, which may be extended by a reasonable period of time.

6.2 Where the Goods are delivered by instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claims by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole repudiated.

6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the value of such Goods (ex VAT and ex works).

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:-

- (1) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (2) sell the Goods on the open market and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. Inspection

7.1 The Buyer shall inspect the Goods at the place and time of delivery, but nothing in these Conditions shall require the Buyer to break packaging and/or unpack Goods which are intended to be stored before use.

7.2 The Buyer must give the Seller's sales office written notice of any claim for short delivery within: (1) three (3) days of the due delivery date in the case of short delivery; or (2) fifteen (15) days of the date of invoice in the case of non-receipt of a complete consignment as described the Seller's official invoice. Such notification must be made in addition to the written notification made on the carrier's consignment note.

7.3 If the Buyer does not give the Seller such notice the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.

7.4 The Buyer shall not be entitled, and irrevocably and unconditionally waives any rights, to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused.

7.5 The Seller's liability for short delivery is limited to making good the shortage.

7.6 Where it is, or would have been, apparent on a reasonable inspection that the Goods are not in conformity with the Contract the Buyer must give the Seller's sales office written notice within three (3) days of delivery of receipt of the consignment. Such notification must be made in addition to the written notification made on the carrier's consignment note.

7.7 If the Buyer fails to give the Seller such notice: (1) the Goods will be deemed to have been accepted and the Buyer shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods; and (2) condition 9 shall have effect.

7.8 If on receipt of a consignment a full inspection cannot be carried out, the consignment note must be signed "UNEXAMINED".

8. Risk and Property

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

(1) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

(2) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller or its nominated contractor has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Subject to Condition 8.4, until that time the Buyer shall be entitled to resell the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.4 The Buyer's right to possession of the Goods shall cease if he becomes bankrupt, does anything or fails to do anything

which would entitle a Receiver to take possession of any assets or which would enable any person to present a petition for winding-up or to appoint an administrator over any of the Buyer's assets.

8.5 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods. The Seller shall not be responsible for and the Buyer will indemnify the Seller against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.

8.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Warranties and Liability

9.1 Subject to Condition 9.2, the Seller warrants that the Goods will correspond with their specification (as defined by the Seller) at the time of delivery and will be free from defects in material and workmanship for a period of six (6) months from the date of delivery.

9.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful or accidental damage, Buyer and/or third party negligence, failure to follow the Seller's instructions (whether oral or in writing), misuse, improper storage, or alteration of the Goods without the Seller's approval.

9.3 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.4 Statements in literature and/or correspondence concerning properties and analyses of Goods are only indicative of typical qualities and shall not constitute a term of these Conditions and in the event that samples shall have been submitted to the Buyer for testing the sale shall not be deemed to be a sale by sample.

9.5 Advice and opinions expressed concerning the Goods shall in no way be deemed to be approval of the proposed use of the Goods unless the Seller specifically undertakes the liability for the same for consideration in writing.

9.6 Any claim which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified in writing to the Seller within fourteen (14) days of the discovery of the defect or failure. If the Buyer does so notify the Seller the Buyer shall provide details of the alleged defect, preserve the Goods alleged to be defective and allow the Seller reasonable access to inspect the Goods. If the Buyer does not notify the Seller of any claim in accordance with the provisions of this Condition, or otherwise fails to comply with the provisions of this Condition the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defects or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.7 For the avoidance of doubt, the Buyer shall not be entitled to notify the Seller of a claim under the provisions of this Condition if the relevant Goods: (i) have not been used under normal conditions; (ii) have not been properly stored; or (iii) have been affected by misuse, neglect or accident since delivery.

9.8 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall, at its sole discretion, replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

9.9 Without prejudice to Conditions 9.10 and 9.11, the Seller's total liability in respect of Goods delivered otherwise than in

accordance with the Contract, or any other claim arising in connection with the Contract (whether in contract, tort (including negligence), restitution, for breach of statutory duty or misrepresentation, or otherwise) shall be limited to the price paid or payable by the Buyer to the Seller in respect of the quantities of Goods (ex VAT and ex works) to which the claim relates.

9.10 The Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for loss of profit, loss of business opportunity or damage to reputation or for any indirect loss or damage, costs, expenses which arise out of or in connection with the supply of the Goods or their resale by the Buyer, except as otherwise expressly provided in these Conditions.

9.11 Nothing in these Conditions shall limit or exclude the liability of the Seller, its employees, agents or contractors for death or personal injury caused by their negligence. Furthermore, the limitations and exclusions set out in this Condition 9 shall have no application to any other liability which cannot lawfully be limited or excluded.

9.12 The price for the Goods is based on the liability of the Seller being subject to the limitations and exceptions set out in this Condition 9.

10. Force majeure

10.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:-

- (1) Act of God, explosion, flood, tempest, fire or accident;
- (2) shortages of supplies required for or in connection with the Goods or compliance with any import or export regulations or embargoes or any order or request of any national, port, local or other authority;
- (3) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties).

11. Insolvency of Buyer

11.1 If:-

- (1) the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (2) an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer; or
- (3) the Buyer ceases, or threatens to cease, to carry on business; or
- (4) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly,

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

12. Export terms

12.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, these Conditions shall prevail.

12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 12 shall (subject to any

special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

12.4 Where in accordance with Condition 4.3 the Seller agrees with the Buyer that it will be responsible for delivering the Goods, the relevant Incoterm and point of delivery agreed between the parties shall apply and the Seller shall be under no obligation to give notice under s.32(3) of the Sale of Goods Act 1979.

12.5 The Seller shall be entitled to suspend its performance under this Contract without any liability to the Buyer if, at any time, new economic sanctions and/or export regulations enter into force and render the execution of this Contract either impossible or illegal for the Seller or would otherwise cause financial hardship for the Seller. The Seller shall resume performing its obligations as soon as it becomes again legal and/or possible and/or the financial hardship has ended. If the suspension lasts more than three (3) months, either party may terminate this Contract without any liability to the other.

12.6 The Buyer shall be liable for and shall indemnify and hold the Seller harmless from any and all liability, loss, claims, damages and costs, which the Seller may sustain or incur, arising out of or in any way connected with the Buyer's failure to comply with Conditions 12.3 and/or 13.2.

13. Compliance

13.1 The Buyer shall ensure that in any dealings with the Seller, neither the Buyer nor any of its employees or agents shall commit any offence under the Bribery Act 2010 ("the Act") including not engaging in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Act. The Buyer shall inform the Seller immediately it becomes aware of any actions between the parties that could constitute an offence under the Act.

13.2 It is the Seller's (and the Seller's group's) policy to comply with all applicable sanctions and legal requirements for the import and export of goods, technology and services. The Seller is committed to ensuring compliance with all regulatory and licensing requirements relating to international trade. The Seller does not permit the supply of any of its goods to any individuals, companies or organisations that are subject to any trade, economic or financial sanctions, embargoes or similar restrictive measures administered, enacted or enforced by the UK, EU, UN or USA ("Sanctioned Entities"). By entering into this Contract the Buyer agrees not to re-sell or otherwise transfer the Goods, either directly or indirectly, to any Sanctioned Entities.

13.3 The parties intend that this Contract and their actions in relation to it shall comply at all times with all applicable competition laws, and in particular with EC and UK competition laws, and the parties are satisfied that the Contract does so comply as at the start date of this Contract.

13.4 The parties agree during the term of the Contract to take all appropriate steps to ensure that there are no discussions, exchanges or disclosures of information or documents, or other acts or omissions by or between them in relation to the Contract which might contravene applicable competition laws.

13.5 In the event that either party believes, for any reason, that the Contract no longer complies with all applicable competition laws, it must notify the other party immediately. Both parties must then as soon as reasonably practicable enter into negotiations in good faith and they must use all reasonable endeavours to amend or vary the Contract so that it complies with all applicable competition laws while giving effect so far as possible to the parties' original intentions in relation to the Contract.

14. Data Protection

14.1 For the purposes of this condition 14, (a) "Data Protection Laws" means any laws and regulations relating to the use or processing of personal data including: (a) EU Directive 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directive, including (in the UK) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) the Data Protection Act

2018; and (c) EU Regulation 2016/679 ("GDPR"); and (d) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR; in each case, as updated, amended or replaced from time to time; and (b) the terms "Data Subject", "Personal Data", "processing", "processor" and "controller" shall have the meanings set out in the GDPR.

14.2 Each party shall comply with the provisions and obligations imposed on it by the Data Protection Laws when processing Personal Data in connection with these Conditions. Such processing shall continue for so long as these Conditions is in force and shall be in respect of the following:

- (1) Categories of data: Contacts within each of the parties and the ultimate customer details;
- (2) Types of personal data: names, addresses, email addresses, telephone numbers and other contact details;
- (3) Purpose and nature of processing: (i) manage the Contracts between the parties including ordering, fulfilment and billing and (ii) fulfilment of such Contracts by delivering goods.

14.3 To the extent that a party processes any Personal Data on behalf of the other party, the processing party shall: (a) comply with the provisions and obligations imposed on a processor by the GDPR, including the stipulations set out in Article 28(3)(a)-(h) which form a part of, and are incorporated into, these Conditions as if they were set out in full, and the reference to "documented instructions" in Article 28(3)(a) shall include the provisions of these Conditions; and (b) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other party or as expressly provided for in these Conditions.

14.4 The Buyer agrees that the Seller may engage third party providers including any advisers, contractors, or auditors to Process Personal Data ("Sub-Processors"). The Seller shall ensure that its contract with each Sub-Processor shall impose obligations in relation to the Processing of Personal Data on the Sub-Processor that are materially equivalent to the obligations to which the Seller is subject to under these Conditions in relation to the Processing of Personal Data.

14.5 If either party receives any complaint, notice or communication which relates to the processing of Personal Data by the other party or to either party's compliance with the Data Protection Laws, or if any Personal Data processed in connection with these Conditions is subject to a personal data breach (as defined in the GDPR), it shall immediately notify the other party and provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice, communication or personal data breach.

15. General

15.1 The Seller is a member of the group of companies whose ultimate holding company is Compagnie de Saint Gobain S.A., and accordingly the Seller may perform any of its obligations or

exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.

15.2 Without affecting any other right or remedy available to it, if the Buyer commits a material breach of any term of these Conditions and/or the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so, the Seller may without liability to the Buyer suspend or terminate any Contract with the Buyer with immediate effect by giving written notice to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15.3 The Buyer shall not assign the benefit of the Contract without the prior written consent of the Seller.

15.4 The Buyer shall hold all specifications and other information supplied or provided by the Seller in strict confidence and will not disclose or provide any part thereof to any third party.

15.5 Any notice required or permitted to be 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 as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

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

15.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

15.8 The Contracts (Rights of the Third Parties) Act 1999 shall not apply to these Conditions or any Contract so they may not be enforced by any third parties unless such right exists independently of that Act.

15.9 These Conditions and all Contracts shall be governed by and construed in all respects in accordance with English Law and, subject to condition 15.10, shall be subject to the non-exclusive jurisdiction of the English Courts.

15.10 Condition 15.9 is for the benefit of the Seller. As a result, the Seller is not prevented from taking proceedings against the Buyer in any other court of competent jurisdiction. To the extent permitted by law, the Seller may take concurrent proceedings in any number of jurisdictions.

January 2019