

HALEWOOD CHEMICALS LIMITED - STANDARD TERMS AND CONDITIONS OF SALE

The Buyer's attention is in particular drawn to the provisions of Condition 12 (Limitation of liability)

1. DEFINITIONS & INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these Conditions.
- 1.2 Anti-Corruption Legislation: the United Kingdom Bribery Act 2010 (and any amendment thereto) and all other applicable laws and regulations prohibiting public or commercial bribery, extortion, kickbacks or other unlawful or improper means of conducting business.
- 1.3 **Buyer:** the person, firm or company who purchases the Goods from HCL.
- 1.4 **Conditions:** these terms and conditions as amended from time to time in accordance with Condition 16.8.
- 1.5 **Contract:** means any agreement for the purchase and sale of Goods from HCL to Buyer which result from an Order submitted to and accepted by HCL.
- 1.6 **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
- 1.7 **Data Protection Legislation:** the Data Protection Act 2018 and General Data Protection Regulation (EU) 2016/679 (GDPR) of the European Parliament and Council relating to the protection of natural persons with regard to the processing of personal data and on the free movement of such 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); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
- 1.8 **Goods:** any goods agreed in the Contract to be supplied to the Buyer by HCL (including any part or parts of them).
- 1.9 **HCL:** Halewood Chemicals Limited, registered in England & Wales with company number 00499508.
- 1.10 Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, Trade Marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including Know-How and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.11 **Know How:** information, data, know how, experience, show how, and other technical or commercial information relating to the Goods, whether patentable or not and whether in human or machine readable form and whether stored electronically or otherwise and including, but not limited to, all design or manufacturing techniques, machinery and mould designs, raw material or product specifications, drawings, blueprints, and any other technical and commercial information relating to research, design, development, manufacture, assembly, use or sale of the Goods.
- 1.12 **Modern Slavery:** The UK Modern Slavery Act 2015.
- 1.13 **Order:** Buyer's oral, written or electronic order for Goods and shall include any order that Buyer places online through HCL's website or transmits via email.
- 1.14 **Specification:** any specification for the Goods (including quantity and description) that is set out in writing by HCL in its quotation or acknowledgement of order.
- 1.15 **Trade Mark:** HCL's trade names and/or trade and service marks (whether registered or unregistered) from time to time.
- 1.16 **UK 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; 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.
- 1.17 As used in these Conditions, (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) reference to a party includes its successors and permitted assigns (c) a reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision; (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms. (e) a reference to **writing or written** includes email; (f) Condition headings do not affect the interpretation of these conditions.

2. GENERAL TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification, or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all HCL's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of HCL. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of HCL which is not set out in the Contract. Nothing in this Condition shall exclude or limit HCL's liability for fraudulent misrepresentation. HCL will use reasonable efforts to notify Buyer of any material changes to the Conditions before they become applicable, but it is the sole and exclusive responsibility of the Buyer to ensure that it is familiar with the most current set of Conditions which apply to any Contract between HCL and Buyer.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from HCL shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions. Buyer shall be deemed to have accepted these Conditions by the earlier of: (i) completing HCL's customer application form or (ii) submitting an order to HCL, or (iii) accepting Goods from HCL.
- 2.5 HCL has no obligation to accept any order placed by Buyer, accordingly, no order placed by the Buyer shall be deemed to be accepted by HCL until a written acknowledgement of order is issued by HCL or (if earlier) HCL delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Unless otherwise indicated on the quotation any quotation is given on the basis that no Contract shall come into existence until HCL despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that HCL has not previously withdrawn it.

3. SPECIFICATION

- 3.1 The quantity, specification and description of the Goods shall be as set out in HCL's quotation or acknowledgement of order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by HCL and any descriptions or illustrations contained in HCL's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them, they shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by HCL, delivery of the Goods under the Contract will be made Ex-Works from (Incoterms® 2020) HCL's premises in Stanwell Moor, United Kingdom upon notification to Buyer that the Goods are ready for collection.:
- 4.2 Any dates specified by HCL for delivery of the Goods are approximate only and time for delivery shall not be made of the essence by notice under any Contract. If no delivery dates are so specified, delivery shall be within a reasonable time.
- 4.3 No delay in the delivery of the Goods (howsoever caused), shall entitle the Buyer to terminate or rescind the Contract.
- 4.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or HCL is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then, without prejudice to any other right or remedy available to HCL:
 - (a) risk in the Goods shall pass to the Buyer on the date HCL made the Goods available for delivery; and
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) HCL may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance); or
 - (d) HCL may terminate the Contract forthwith and sell the Goods.

- 4.5 If HCL delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by HCL, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.6 Upon notice to Buyer, HCL may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.7 Where it is agreed that the Goods shall be delivered by instalments in the case of default by the Buyer in payment of any instalment, HCL shall reserve the right to cancel any outstanding part of the Contract or any future instalment or instalments.
- 4.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 4.9 All Goods are subject to availability at the due date for despatch. If HCL determines there is a shortage of Goods, HCL may allocate any available Goods between its buyers on such a basis as it deems appropriate. In case of the foregoing, Buyer agrees to accept any Goods delivered to it and shall pay the appropriate pro-rated portion of the invoiced price for such Goods.
- 4.10 Buyer shall bear any and all costs (including original and return carriage costs) associated with any unjustified refusal of delivery of Goods ordered pursuant to a Contract.
- 4.11 The quantity of any consignment of Goods as recorded by HCL on despatch from HCL's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.12 HCL shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide HCL with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.13 HCL shall not be liable for any non-delivery of Goods (even if caused by HCL's negligence) unless the Buyer gives written notice to HCL of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been delivered.
- 4.14 HCL's sole liability for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5. RISK/TITLE

- 5.1 The Goods are at the risk of the Buyer from the time of delivery.
- 5.2 All Goods shall be shipped in standard packaging unless otherwise stated. Specialised packaging for hazardous, keep cool or other items may be subject to an additional charge.
- 5.3 Ownership of the Goods shall not pass to the Buyer until HCL has received in full (in cash or cleared funds) all sums due to it in respect of:
 - (a) the Goods; and
 - (b) all other sums which are, or which become due to HCL from the Buyer on any account.
- 5.4 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as HCL's bailee;
 - (b) store the Goods (at no cost to HCL) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as HCL's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition in their original packaging, properly stored, protected, and insured on HCL's behalf for their full price against all risks to the reasonable satisfaction of HCL. On request the Buyer shall produce the policy of insurance to HCL;
 - (e) Notify HCL immediately if it becomes subject to any of the events listed in Condition 5.6(a) – (c); and
 - (f) Give HCL such information relating to the Goods as HCL may require from time to time.
- 5.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value;
 - (b) it does so as principal and not as HCL's agent; and
 - (c) that any such resale shall be subject to a retention of title clause, including a right of entry for HCL or its nominated third party agents to repossess Goods covered by this section.
 - (d) Buyer shall not offer the Goods as collateral or otherwise pledge or grant a charge or allow a lien to exist in respect of the Goods (a "Third Party Security Interest") until title has passed to Buyer in accordance with these Conditions. If Buyer does permit, allow or otherwise create a Third Party Security Interest in the Goods before title has passed to Buyer, then all monies owed to HCL shall immediately become due and payable.
- 5.6 The Buyer's right to possession of the Goods or to re-sell them in accordance with Condition 6.7 shall terminate immediately if:
 - (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between HCL and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.and Buyer shall promptly on request by HCL, deliver up all Goods in its possession that have not been resold.
- 5.7 The Buyer grants HCL, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 5.8 Where HCL is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by HCL to the Buyer in the order in which they were invoiced to the Buyer.
- 5.9 On termination of the Contract, howsoever caused, HCL's (but not the Buyer's) rights contained in this Condition 5 shall remain in effect.

6. PRICE

- 6.1 The price of Goods on the Contract date shall be the quoted price (which shall be given to Buyer formally in writing) excluding value added tax, if applicable.
- 6.2 Notwithstanding the foregoing, HCL reserves the right to increase the prices quoted by giving notice to Buyer any time before delivery, to reflect any increase in the cost of such Goods that is due to any factor beyond the control of HCL, including any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give HCL adequate information or instruction, but HCL shall only increase its price by the amount necessary to reflect such an increase. Further, in the event HCL or its agent makes a material error or omission when quoting a price, HCL shall be entitled, for a period of ten (10) days following the Contract Date, to increase the price of the related Goods sold to Buyer by re-quoting the Goods.

7. PAYMENT

- 7.1 Subject to Condition 7.4, payment of the price for the Goods will be due in pounds sterling, euros or US dollars as stated in the Contract within 30 days of the date of HCL's invoice unless otherwise stated in the Contract, provided that HCL reserves the right at any time to request Buyer make payment with the order.
- 7.2 Time for payment shall be of the essence.

- 7.3 No payment shall be deemed to have been received until HCL has received cleared funds.
- 7.4 All payments payable to HCL under the Contract shall become due immediately on its termination despite any other provision.
- 7.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 7.6 If the Buyer fails to pay HCL any sum due pursuant to the Contract by the due date then, the Buyer shall be liable to pay interest to HCL on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc but at 4% a year for any period when that base rate is below 0%, accruing on a daily basis until payment is made, whether before or after any judgment.
- 8. QUALITY**
- 8.1 HCL warrants that
- on delivery, the Goods shall conform in all material respects with the Specification set out in the CE mark product design file and be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
 - the Goods delivered will have been manufactured and packaged with all due care and attention.
 - it will comply with all European Union statutory requirements and regulations relating to manufacture and storage of the Goods.
 - it holds and will at all times keep in force all licenses, permits, authorisations and approvals required in connection with the manufacture and supply of the Goods within the European Union
- 8.2 HCL shall not be liable for a breach of the warranty in condition 8.1 unless:
- the Buyer gives written notice of the defect to HCL, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the delivery; and
 - HCL is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by HCL) returns such Goods to HCL's place of business for the examination to take place there.
- 8.3 HCL shall not be liable for a breach of the warranty in condition 8.1 if:
- the Buyer makes any further use of such Goods after giving such notice; or
 - the defect arises because the Buyer failed to follow HCL's written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
 - the Buyer alters such Goods without the written consent of HCL.
- 8.4 Subject to Condition 8.2 and Condition 8.3, if any of the Goods do not conform with the warranty in condition 8.1 HCL shall at its option either (i) replace such Goods (or the defective part) or (ii) refund the price of such Goods at the pro rata Contract rate provided that, if HCL so requests, the Buyer shall return the Goods or the part of such Goods which are defective to HCL. The remedies set forth in this Condition 8.4 shall be Buyer's sole and exclusive remedy in connection with Condition 8.1.
- 8.5 The terms of these Conditions shall apply to any replacement Goods supplied by HCL.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods (other than Intellectual Property Rights in any materials provided by the Buyer) shall be owned by HCL.
- 9.2 The Buyer has no rights in respect of any Trade Marks owned or used by HCL or of the associated goodwill in respect of any other Intellectual Property Rights of HCL protecting or relating to the Goods. The Buyer acknowledges that nothing in these Conditions confers any such rights to Buyer and that all such rights and goodwill are, and will remain, vested in HCL.
- 9.3 To the extent that any Intellectual Property Right protecting or relating to the Goods or any goodwill associated with the Trade Marks vests in the Buyer by operation of law or otherwise, the Buyer hereby assigns (by way of assignment of present and future rights) without payment all such Intellectual Property and goodwill to HCL with full title guarantee. If a further assignment is required or if the Buyer is unable to assign such Intellectual Property Right, the Buyer will upon HCL's request, execute all documents that may be necessary to effect the transfer of ownership to HCL.
- 10. COMPLIANCE**
- In performing their respective obligations hereunder, both parties will and procure that their employees, agents, and sub-contractors comply with:
- Applicable Data Protection Legislation: each party may process such personal data (limited to minimal contact information) as is necessary for the limited purpose of administering the Contract and these conditions and the business relationship between the parties ("**Administrative Information**") and as expressly agreed in writing between the parties from time to time. Each party shall upon becoming aware, promptly notify the other party of any personal data breach relating to the Administrative Information and shall promptly provide reasonable information about the same on request of the other party.
 - The Modern Slavery Act 2015 and Anti-Corruption Legislation: comply (and procure that its Representatives comply) with the UK Bribery Act 2010 ("**Bribery Act**") and all other applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption.
- 11. CONFIDENTIALITY**
- 11.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs], except as permitted by Condition 12.2.
- 11.2 Each party may disclose the other party's confidential information:
- to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Condition 12; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 12. LIMITATION OF LIABILITY: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION.**
- 12.1 HCL has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover HCL has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2 The restrictions on liability in this Condition 12 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation;
 - breach of the terms implied by section 12 of the Sale of Goods Act 1979; and
 - defective products under the Consumer Protection Act 1987.
- 12.4 This Condition 12.4 sets out specific heads of excluded loss:
- Subject to Condition 12.3, the types of loss listed in Condition 13.4(b) are wholly excluded by the parties.
 - The following types of loss are wholly excluded:
 - loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
- 12.5 HCL has given commitments as to compliance of the Goods with relevant specifications in Condition 8. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.6 Unless the Buyer notifies HCL that it intends to make a claim in respect of an event within the notice period, HCL shall have no liability for that event. The notice period for an event shall start on the day on which the Buyer became, or ought reasonably to have become, aware of the event having occurred and shall expire one month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.7 The Buyer is responsible for ensuring that Goods ordered comply with local import regulations. HCL shall not be liable for Goods impounded, confiscated, or destroyed or refused entry into any country through lack of compliance with regulations or failure to obtain an import licence or pre-shipment inspection. Where an import licence or pre-shipment inspection is required a proforma invoice can be supplied by HCL for this purpose.
- 12.8 Subject to Condition 12.3 HCL's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.
- 12.9 This Condition 12 shall survive termination of the Contract.
- 13. ASSIGNMENT**
- 13.1 HCL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 13.2 The Buyer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 14. FORCE MAJEURE**
- HCL reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of HCL including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to HCL to terminate the Contract.
- 15. SEVERABILITY**
- If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be shall not affect the validity and enforceability of the rest of the Contract.
- 16. WAIVER**
- 16.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.2 Each right or remedy of HCL under the Contract is without prejudice to any other right or remedy of HCL whether under the Contract or not.
- 17. NO PARTNERSHIP/AGENCY**
- Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18. ENTIRE AGREEMENT**
- 18.1 The Contract constitutes the entire agreement between the parties and supersedes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- 18.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 18.3 Nothing in these Conditions shall limit or exclude any liability for fraud.
- 18.4 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 19. THIRD PARTY RIGHTS**
- Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20. GOVERNING LAW**
- 20.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each Party agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions or its subject matter or formation (including non-contractual disputes or claims).
- 21. ESCALATION AND NOTICES**
- 21.1 If at any time any question, dispute or difference arises between the parties ("**Dispute**"), then either party may give to the other notice in writing as to such Dispute ("**Dispute Notice**") and upon receipt of such notice the appropriate representatives of the relevant parties will use their reasonable endeavours to resolve the Dispute in good faith and refer the matter to their nominated representatives as provided below:
- Representatives of appropriate seniority from each Party will meet within five (5) Business Days after receipt of a dispute notice with a view to resolving the Dispute.
 - In the event that the Dispute is not resolved by such representatives within 5 Business Days of the date of delivery of the dispute notice the Dispute will be referred to the next level of management of the parties who must meet within five (5) Business Days or such other period as the parties may agree to attempt to resolve the Dispute.
 - If the unresolved Dispute is having a serious adverse effect on HCL's business, the parties will use their reasonable endeavours to reduce the time limits set out above.
- 21.2 If any representative is unable to attend a meeting, a substitute may attend provided that such substitute has at least the same seniority or reasonably comparable managerial or directorial responsibility and is authorised to settle the unresolved Dispute.
- 21.3 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - sent by email to the address specified in the Contract.
- 21.4 Any notice or communication shall be deemed to have been received:
- if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Condition 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 21.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 21.6 Communications addressed to HCL shall be marked for the attention of a Director.