



International  
Trade  
Centre

EXPORT IMPACT  
FOR GOOD

# ITC MODEL CONTRACT FOR THE INTERNATIONAL LONG-TERM SUPPLY OF GOODS

EXTRACT FROM "MODEL CONTRACTS  
FOR SMALL FIRMS"

GENEVA 2010

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## Chapter 4

# International Long-Term Supply of Goods

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## Introduction

This Model Contract is for the **long-term supply of manufactured Goods**, between a Supplier and a Customer.

1. The contract is intended for use in connection with *manufactured Goods, rather than commodities*, which have their own special features, and are often sold on the standard forms of producers' or dealers' associations.
2. The Supplier may or may not be the manufacturer of the Goods.
3. The contract is not intended for use where the Goods are supplied for resale by a distributor (see the Model Contract for the International Distribution of Goods).
4. The contract can also be compared to the Model Contract for the International Commercial Sale of Goods, intended for a single sales transaction, or where there is no ongoing commitment between the Parties.
5. One main contract aim is to establish the *level of each party's obligation* to the other – whether this involves Goods ordered from time to time, or fixed or minimum quantities. Options are included for these possibilities (Article 1). In addition, there may be a provision for minimum or maximum order quantities.
6. Another aim is to establish the *procedure for ordering and delivering the Goods*, so as to maximize the level of certainty for each party (Article 2).
7. A third aim is to provide a *mechanism to establish prices* at which the Goods are to be supplied over the period of the contract. Again, various options are included for pricing, as well as payment (Articles 3 and 4).
8. A contract of this type may also deal with issues of *liability*, subject to (or possibly overriding) the default position under applicable law (Articles 5 and 7).
9. This contract also examines *duration*. In view of the different considerations one can take into account, it is not possible to provide for all possibilities. Commonly such a contract will be for several years, sometimes with the right of one party or both parties to terminate early for convenience, for breach of contract or for insolvency of the other party. A maximum period may be imposed by applicable law, depending on the circumstances (Article 8).

10. *Standard provisions* have been included, including change of circumstances (hardship) (Article 9), and *force majeure* (Article 10).
11. In some cases, long-term supply agreement is used in connection with the standard Terms of sale of the Supplier or even the standard Terms of purchase of the Customer. For cases where these do not exist or are not intended to apply, a set of simple additional *Terms of supply* has been included (schedule 4).

## ITC MODEL CONTRACT FOR THE INTERNATIONAL LONG-TERM SUPPLY OF GOODS

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***PARTIES:***

***Supplier***

Name (name of company)  
.....  
Legal form (e.g. limited liability company)  
.....  
Country of incorporation and (if appropriate) trade register number  
.....  
Address (address of place of business of the Supplier, phone, fax, e-mail)  
.....  
.....  
Represented by (surname and first name, address, position, legal title of  
representation) . . . . .  
.....  
.....

***Customer***

Name (name of company)  
.....  
Legal form (e.g. limited liability company)  
.....  
Country of incorporation and (if appropriate) trade register number  
.....  
Address (address of place of business of the Customer, phone, fax, e-mail)  
.....  
.....  
Represented by (surname and first name, address, position, legal title of  
representation) . . . . .  
.....  
.....

Collectively “the parties”

*[Add any further information required e.g. the Parties’ fiscal identities.]*

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## Background

- A. The Supplier carries on business in the *[manufacture and – delete if not appropriate]* supply of *[specify Goods]*.
- B. The Customer wishes to purchase certain of the Goods *[manufactured and – delete if not applicable]* supplied by the Supplier, details of which are set out in schedule 1 (the “Goods”) and the Supplier is willing to sell such Goods to the Customer, on the Terms of this contract.

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## Operative provisions

### 1. Supply of the Goods

1.1 During the period of this contract (the “Term”) the Supplier shall sell and the Customer shall purchase the Goods ordered by the Customer, subject to the following provisions.

1.2 The specification of the Goods shall be as set out in schedule 1, but the Supplier reserves the right to make any change in the specification of the Goods that is necessary in order for them to conform with any applicable laws, provided the Supplier promptly informs the Customer in writing of any such change that it proposes to make.

1.3 The Customer shall promptly inform the Supplier of any proposed change in the specification of the Goods which is necessary in order for them to conform with any applicable laws in the territory of the Customer, in which event the Supplier shall promptly notify the Customer in writing whether it is willing to change the specification and (if so) any resulting change in the price of the Goods. If the Supplier does not notify the Customer in writing within a reasonable time (not exceeding *[thirty (30) days – specify any other period]*) that it agrees to the change in the specification, or if it does do so but the Customer does not notify the Supplier in writing within a reasonable time (not exceeding *[thirty (30) days – specify any other period]*) that it agrees any change in the price of the Goods proposed by the Supplier, the Goods in question shall cease to be subject to this contract, and where the Goods in question form all or a substantial proportion of the Goods covered by this contract, either party may terminate this contract by giving written notice to the other party.

*[Select either Alternative 1 or 2: Minimum quantity purchase obligation:*

*“In each [year – specify any other period] of the Term the Customer, unless prevented by force majeure, shall order from the Supplier not less than the minimum quantity of the Goods specified in schedule 2. If the Supplier fails by reason of force majeure or otherwise to supply the Customer with the quantity of the Goods so ordered by the Customer, the minimum quantity of the Goods for the [year – specify any other period] in question shall be reduced by the quantity of the Goods that the Supplier fails to supply.”]*

*[Alternative 2: Minimum percentage purchase obligation:*

*“In each [year – specify any other period] during the Term the Customer shall order from the Supplier not less than [specify] % of the Customer’s requirements of the Goods (or other Goods of the same description) calculated by reference to the total quantities of*

*the Goods (and any other Goods of the same description) of which the Customer takes delivery from any person in that [year – specify any other period]. If the Supplier fails by reason of force majeure or otherwise to supply the Customer with any quantity of the Goods so ordered, the minimum quantity for the [year – specify any other period] in question that the Customer would otherwise be required to purchase shall be reduced by the quantity that the Supplier fails to supply.”]*

1.4 The Supplier shall provide the Customer with any instructions concerning the use of the Goods which are reasonably required or which the Supplier may reasonably specify, in which case the Customer undertakes to comply with those instructions.

*[1.5 Option 1: Additional Terms of Supply*

*“Subject to the provisions of this contract, the supply of the Goods shall be made on the basis of the Terms of sale set out in schedule 4. In the event of any conflict between those Terms and the Terms of this contract, the Terms of this contract shall prevail.”]*

*[Option 2: Supplier's Standard Terms of Sale (or Customer's Standard Terms of Purchase)*

*“Subject to the provisions of this contract, the supply of the Goods shall be made on the basis of the Supplier's standard Terms of sale (or the Customer's standard Terms of purchase), a copy of which is annexed to this contract.”]*

## **2. Procedure for ordering and delivering the Goods**

2.1 The Customer shall, not less than *[fifteen (15) – specify any other period]* days before the beginning of each *[month – specify any other period]*, give the Supplier its written order for the Goods to be delivered to the Customer during that *[month – specify any other period]*.

2.2 Each order for the Goods must be given in writing and shall be subject to confirmation in writing by the Supplier. The Supplier shall confirm the order in writing to the Customer within *[fifteen (15) days – specify any other period]* after it is given unless the Supplier has a valid reason not to do so. Upon confirmation by the Supplier each order shall be final, but the Supplier may at its discretion accept an amendment to an order within *[fifteen (15) days – specify any other period]* after it is given.

2.3 *[Each order for the Goods shall upon confirmation by the Supplier be deemed to constitute a separate contract, and accordingly any breach by the Supplier in relation to any one order shall not entitle the Customer to terminate this contract as a whole. – delete if not appropriate.]*

2.4 The Customer shall notify the Supplier in writing of:

2.4.1 Its estimated orders for the Goods for each year *[specify any other period]* during the Term, within *[specify period]* months prior to that *[year – specify any other period]*; and

2.4.2 Any revisions to those estimates, as soon as practicable after they are made.

2.5 The Customer shall be responsible to the Supplier for:

2.5.1 Ensuring the accuracy of each order for the Goods given by the Customer;



2.5.2 Promptly giving the Supplier all necessary information relating to the Goods which is reasonably requested by the Supplier to enable the Supplier to fulfil each order in accordance with its Terms; and

2.5.3 Obtaining any necessary import licences or other requisite documents (except those agreed to be provided by the Supplier in accordance with schedule 4), and otherwise complying with any applicable laws or regulations concerning the importation of the Goods, and for paying all applicable customs duties, taxes and charges in respect of the importation of the Goods and their resale (unless they are exempt).

2.6 Upon confirmation of each order the Supplier shall as soon as is practicable *[and in any event within [specify] days – delete if not appropriate]* inform the Customer of the Supplier's estimated delivery date for the Goods.

2.7 The Supplier shall *[use its reasonable commercial endeavours to – delete if not appropriate]* deliver the Goods on *[or within [specify] days of – delete if not appropriate]* the estimated delivery date for each order.

2.8 *[Option 1: "Liquidated damages for delay:*

*If there is any delay in the delivery of the Goods [of more than specify] days after the estimated delivery date] then, unless the delay is due to force majeure, the price of the Goods shall be reduced by [specify monetary amount] for every day of the delay until delivery of the Goods, subject to a maximum of [specify] % of the price."*

*Option 2: "No liability for delay due to Customer:*

*The Supplier shall have no liability for any delay in delivery of the Goods that is due to any failure by the Customer to provide any required information in good time."*

2.9 The Supplier shall use its reasonable commercial endeavours to manufacture and maintain sufficient stocks of the Goods to fulfil its obligations under this contract, but may *[after consultation with the Customer – delete if not appropriate]* discontinue the manufacture of all or any of the Goods, in which case the Supplier will give the Customer *[thirty (30) days' – specify any other period]* notice in writing of the discontinuation, and the Supplier shall fulfil all outstanding orders for the Goods in question which are placed by the Customer before the date of the notice.

2.10 If the Customer's orders for the Goods exceed (or if it appears from any estimate or revised estimate given by the Customer that they will exceed) the output capacity or available stocks of the Supplier:

2.10.1 The Supplier shall as soon as practicable notify the Customer;

2.10.2 The Customer shall be entitled to obtain from any other person such quantity of the Goods as the Supplier is unable to supply in accordance with the Customer's orders until such time as the Supplier has given the Customer written notice (together with such supporting evidence as the Customer may reasonably require) that it is able and willing to resume the supply of the Goods in accordance with the Customer's orders and the Customer has had a reasonable time to terminate any alternative supply arrangements which it may have made with any other person; and

2.10.3 *[That quantity shall be deemed for the purposes of Article 1.4 to have been ordered from the Supplier – delete if there is no minimum purchase obligation.]*

2.11 *[Option (where there is a minimum purchase obligation):*

*“Within [sixty (60) days – specify any other period] after the end of each [year – specify any other period] during the Term the Customer shall submit to the Supplier a written report showing:*

2.11.1 *The total quantity of the Goods (or any other Goods of the same description) of which the Customer has taken delivery from any person (including the Supplier) in that year, and*

2.11.2 *The percentage of that total quantity which in that year was ordered by the Customer from the Supplier.” [Delete if there is not a minimum percentage purchase obligation under Article 1.4].]*

### **3. Price of the Goods**

3.1 Except as otherwise agreed in writing between the Supplier and the Customer, the prices for all Goods to be supplied under this contract shall be the Supplier’s *[Ex works/FOB – specify any other basis]* list prices from time to time.

3.2 The Supplier shall:

3.2.1 Supply the Customer with copies of the Supplier’s *[Ex works/FOB – specify any other basis]* price lists for the Goods in force from time to time; and

3.2.2 Give the Customer not less than *[specify period]* months’ notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods delivered on and after the applicable date of the increase, including outstanding orders.

Alternative to Article 3.2.2: Give the Customer not less than *[specify period]* months’ notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods ordered after the applicable date of the increase.

*[Option: Cost related price increase*

*“3.3 The Supplier reserves the right to increase the price of the Goods to reflect any material increase in the cost to the Supplier of [manufacturing – delete if not appropriate] or supplying the Goods by giving not less than [specify period] notice to the Customer, [provided that the Supplier shall not increase the price of any of the Goods by more than [specify] % in any year [specify any other period] of the Term – delete if not appropriate], and the prices as so altered shall apply to all Goods ordered after the applicable date of the increase.”]*

*[Option: Customer’s right of termination for price increase*

*“3.4 If pursuant to Article 3.2 or 3.3 the Supplier increases or proposes to increase the price of the Goods [by more than [specify] % in any year [specify any other period], the Customer may terminate this contract by giving not less than [specify period] written notice to the Supplier.”]*

*[Option: Price comparison*

*“3.5 If at any time the Customer can establish that the price charged by the Supplier for any of the Goods exceeds the price at which a bona fide third party is supplying Goods*

*of a similar specification in commercially significant quantities and on a regular basis in the territory of the Customer, the price of the Goods shall, at the request of the Customer in writing, be reduced so as to match that other price. If the Supplier does not agree in writing to such a request within a reasonable time (not exceeding thirty (30) days – specify any other period)), the Goods in question shall cease to be subject to this contract, and where the Goods in question form all or a substantial proportion of the Goods covered by this contract, either party may terminate this contract by giving written notice to the other party.”.]*

3.6 The prices of the Goods are [*inclusive/exclusive – delete as appropriate*] of any value added tax or similar sales tax, for which the Customer shall be liable in addition to the price.

3.7 If the Supplier agrees to deliver the Goods otherwise than on an [*Ex works/FOB – specify as appropriate*] basis, the price is exclusive of the Supplier’s charges for transport, packaging and insurance up to the point of delivery, for which the Customer shall be liable in addition to the price.

## 4. Payment

4.1 The price of the Goods shall be payable within [*thirty (30) days – specify any other period*] of the Supplier’s invoice (which may be submitted at any time after the Goods are dispatched) or as otherwise agreed in writing between the Parties.

4.2 All payments shall be made by transfer to a bank account specified by the Supplier in writing, without any set-off, deduction or withholding except for any tax which the Customer is required by law to deduct or withhold.

4.3 [*Option 1: Payment in advance*

*“The Supplier may invoice the Customer for the price of the Goods at any time before delivery, and the Customer shall pay the sum due in cleared funds to the bank nominated by the Supplier on or before delivery.”.]*

[*Option 2: Other methods of payment*

*“The Supplier may require the Customer to pay the price of any Goods by [*specify payment method, e.g. payment by documentary collection / payment by irrevocable documentary credit.*”.]*

4.4 Time for payment of the price of the Goods shall be of the essence of this contract – [*delete if not appropriate.*]

4.5 If the Customer fails to pay the price for any Goods in accordance with this contract the Supplier may (without limiting any other right or remedy):

4.5.1 Cancel or suspend any further delivery to the Customer under any order;

4.5.2 Sell or otherwise dispose of any Goods which are the subject of any order by the Customer, whether or not appropriated to the order, and apply the proceeds of sale to the overdue payment; and

4.5.3 Charge the Customer interest on the outstanding amount (both before and after any judgment) at the rate of [*specify*] % from the due date until the outstanding amount is paid in full.

*[Comment: The Parties should take into consideration that in some legal systems payment of interest is unlawful, or is subject to a legal maximum rate, or there is provision for statutory interest on late payments.]*

## 5. Warranties relating to the Goods

5.1 Subject to the following provisions, the Supplier warrants to the Customer that:

5.1.1 The Supplier will have good title to the Goods supplied under this contract;

5.1.2 *[The use or resale of the Goods supplied under this contract will not infringe the patent, design, copyright, trademark or other intellectual property rights of any third party – delete if not appropriate];* and

5.1.3 Subject to Article 5.2, the Goods supplied under this contract will comply with any specification agreed for them and be free from defects in material and workmanship for a period of *[ninety (90) days – specify any other period]* from delivery to the Customer.

5.2 The Supplier shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, or any wilful damage, negligence, subjection to abnormal working conditions, failure to follow the Supplier's written instructions, misuse or alteration or repair of the Goods without the Supplier's approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.

5.3 *[In the event of any breach of the Supplier's warranty under Article 5.1.3 the Supplier's liability shall be limited to]:*

5.3.1 Repair or (if that is not practical) replacement of the Goods in question; or

5.3.2 Repayment of any part of the price for the Goods in question which has been paid *[delete if not appropriate]*.

5.4 *[Option: "Where the Supplier is not the manufacturer of the Goods, the Supplier shall, without limiting its other obligations, extend to the Customer the benefit of any warranty or other Term given by the manufacturer." [delete if not appropriate].]*

*[Option (in common law systems):*

*"5.5 All other warranties or other Terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law."]*

## 6. Confidentiality

6.1 Both parties understand and acknowledge that, by virtue of this contract, they may both receive or become aware of information belonging or relating to the other party, its business, business plans, affairs or activities, which information is confidential and proprietary to the other party and/or its Suppliers and/or Customers and in respect of which they are bound by a strict duty of confidence ("Confidential Information").

6.2 In consideration of such Confidential Information being disclosed or otherwise made available to either party for the purposes of the performance

of this contract, both parties hereby undertake that they will not at any time, either before or after the termination of this contract, and either directly or indirectly, disclose, divulge or make unauthorized use of any Confidential Information, except to the extent to which such Confidential Information:

- 6.2.1 Is publicly known at the time of its disclosure or being made available to them;
- 6.2.2 After such disclosure or being made available to them, becomes publicly known otherwise than through a breach of this provision;
- 6.2.3 Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by one of the Parties, provided that, where practicable, the other party is given reasonable advance notice of the intended disclosure.

6.3 Upon the earlier of a request from the other party or the termination of this contract, each party shall return to the other or destroy all documents or records in any medium or format containing any Confidential Information that are in its possession or control and will not retain any copies of them.

6.4 The provisions of this Article 6 will continue without limit of time, notwithstanding the termination of this contract for any reason.

## 7. Liability

*[Option: Limitation of Supplier's liability]*

*“Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other Term, for any loss of profit or any indirect, special or consequential loss or damage (whether caused by the negligence of the Supplier, its servants or agents or otherwise) in relation to the supply of the Goods (or any failure to supply them) or their resale by the Customer, or otherwise arising out of or in connection with this contract.”*

*Comment: The Parties should take into consideration that in some legal systems limitations or exclusions of liability may not be effective, or may be subject to restrictions, and that the wording of such a provision should otherwise reflect the applicable law of the contract.]*

## 8. Duration, termination and consequences of termination

8.1 This contract will take effect on the date of its signature by both parties or, if signatures do not occur simultaneously, when the latest signature is given. Unless sooner terminated pursuant to Articles 8.2, 8.3 or 8.4, this contract shall continue for a period of *[specify period]*.

*[Comment: The duration of the contract may be limited for reasons of applicable law (for example, it may need to be limited to 5 years where the EU vertical agreements block exemption is relevant).]*

*[Option: Termination for convenience]*

*“8.2 Either party shall be entitled to terminate this contract at any time by giving not less than *[specify period]* written notice to the other.”*

8.3 The Supplier may (without limiting its rights under Article 4.5) terminate this contract with immediate effect by giving written notice to the Customer, if the latter fails to pay any sum payable by it under this contract within *[specify period]* days of the due date for payment.

8.4 Either party may (without limiting any other remedy) at any time terminate this contract by giving written notice to the other if:

8.4.1 The other party commits any breach of this contract and (if capable of remedy) fails to remedy the breach within *[thirty (30) specify any other figure]* days after being required by written notice to do so; or

8.4.2 The other party goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

*[Comment: References to events of insolvency will need to be adapted for the legal system in question.]*

8.5 For the purposes of Article 8.4.1, a breach of any provision of this contract shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance.

*[Comment: In some legal systems it may be desirable not to include a provision for termination on breach, or to include more detailed provisions concerning the rights and remedies of the Parties in this respect.]*

8.6 The termination of this contract for any reason shall not affect:

8.6.1 Either party's accrued rights, remedies or liabilities including payments due at the effective date of termination; or

8.6.2 The coming into force or the continuance in force of any provision of this contract that is expressly or by implication intended to come into or continue in force on or after termination.

## **9. Change of circumstances (hardship)**

*[Comment: The Parties should be free to consult each other in the event of a major change in circumstances – particularly one creating hardship for a particular party. However, an SME should only include the option at the end of Article 9.4 (right to refer to the courts/arbitral tribunal to make a revision or to terminate the contract) if (i) the SME considers that it is not likely to be used against that party's interests by a party in a stronger tactical position or (ii) the right to refer to a court/tribunal is already an existing right under the applicable governing law in the event of hardship.]*

9.1 Where the performance of this contract becomes more onerous for one of the Parties, that party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

9.2 If, however, after the time of conclusion of this contract, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations (hardship), that party shall be entitled to request revision of this contract provided that:

- 9.2.1 The events could not reasonably have been taken into account by the affected party at the time of conclusion of this contract;
- 9.2.2 The events are beyond the control of the affected party; and
- 9.2.3 The risk of the events is not one that, according to this contract, the Party affected should be required to bear.

9.3 Each party shall in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties.

*[Option (delete if not applicable or not enforceable under the law governing the contract – see comment at beginning of Article 9):*

*“9.4 If the Parties fail to reach agreement on the requested revision within [specify time limit if appropriate], a party may resort to the dispute resolution procedure provided in Article 18. The [court/arbitral tribunal] shall have the power to make any revision to this contract that it finds just and equitable in the circumstances, or to terminate this contract at a date and on Terms to be fixed.”]*

## 10. **Force majeure**

10.1 “*Force majeure*” means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this contract, or to have avoided or overcome it or its consequences.

10.2 A party affected by *force majeure* shall not be deemed to be in breach of this contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this contract to the extent that the delay or non-performance is due to any *force majeure* of which it has notified the other party in accordance with Article 10.3. The time for performance of that obligation shall be extended accordingly, subject to Article 10.4.

10.3 If any *force majeure* occurs in relation to either party which affects or is likely to affect the performance of any of its obligations under this contract, it shall notify the other party within a reasonable time as to the nature and extent of the circumstances in question and their effect on its ability to perform.

10.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by *force majeure* for a continuous period in excess of three *[specify any other figure]* months, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the *force majeure*.

*[Alternative: If preferred, replace 10.4 with the following alternative:*

*“10.4 If the performance by either party of any of its obligations under this contract is prevented or delayed by force majeure for a continuous period in excess of three [specify any other figure] months, the Parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of 30 [specify any other figure] days, the other party shall be entitled to terminate this contract by giving written notice to the party affected by the force majeure.”]*

## 11. General warranties

11.1 Each party warrants to the other that:

11.1.1 It has the authority to enter into this contract;

11.1.2 The signatory to this contract for and on behalf of that party is authorized and fully empowered to execute this contract on that party's behalf;

11.1.3 The entry into and performance of this contract by that party will not breach any contractual or other obligation owed by that party to any other person, any rights of any other person or any other legal provision;

11.1.4 The entry into and performance of this contract by that party require no governmental or other approvals or, if any such approval is required, it has been obtained; and

11.1.5 It will at all times during the Term of this contract comply with the Terms of and maintain in force any necessary governmental or other approvals, consents, notifications, registrations or other legal requirements for the performance by that party of its obligations under this contract.

## 12. Entire agreement

12.1 This contract sets out the entire agreement between the Parties. Neither party has entered into this contract in reliance upon any representation, warranty or undertaking of the other party that is not expressly set out or referred to in this contract. This Article shall not exclude any liability for fraudulent misrepresentation. *[Option, add where relevant: "This contract supersedes any previous agreement or understanding relating its subject matter".]*

12.2 This contract may not be varied except by an agreement of the Parties in writing (which may include e-mail) *[add where Article 9.4 is included: "Or in accordance with Article 9.4".]*

## 13. Notices and writing

13.1 Any notice under this contract shall be in writing (which may include e-mail) and may be served by leaving it or sending it to the address of the other party as specified in Article 13.2 below, in a manner that ensures receipt of the notice can be proved.

13.2 For the purposes of Article 13.1, notification details are the following, unless other details have been duly notified in accordance with this Article:

13.2.1 For the Supplier: *[insert details]*

13.2.2 For the Customer: *[insert details]*

## 14. No partnership or agency

Nothing in this contract shall (i) be deemed to constitute a partnership in law between the Parties, (ii) constitute either party the agent of the other for any purpose or (iii) entitle either party to commit or bind the other (or any member of its respective group) in any manner.



## 15. Assignment and subcontracting

15.1 This contract is personal to the Parties and, except to the extent necessary for the collection of outstanding bills through a factoring agent, neither party shall without the prior written approval of the other:

15.1.1 Assign, mortgage, charge or otherwise transfer or deal in, or create any trust over, any of its rights; or

15.1.2 Subcontract or otherwise delegate the whole or any part of its rights or obligations under this contract to another person.

## 16. Effect of invalid or unenforceable Articles

16.1 If any provision of this contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this contract.

16.2 The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

## 17. Authorizations

17.1 This contract is conditional upon the following authorizations first being obtained *[specify the authorization(s) or other conditions required e.g. of governmental or regulatory authority]*.

17.2 The relevant party shall use all reasonable efforts on its part to obtain such authorizations and shall notify the other party promptly of any difficulty encountered.

## 18. Dispute resolution procedure

Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of *[specify the arbitration institution]* by *[specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators]* appointed in accordance with the said rules. The place of arbitration shall be *[specify]*. The language of the arbitration shall be *[specify]*.

*[The following are alternatives to a specified arbitral institution under Article 18:*

*“Alternative 1: Ad hoc arbitration*

*Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [specify other rules] by [specify the number of arbitrators, e.g. sole arbitrator or, if appropriate, three arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].”*

*[Alternative 2: State courts*

*“Any dispute, controversy or claim arising out of or relating to this contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of [specify place and country] which will have exclusive jurisdiction”.]*

## **19. Language of contract**

This contract has been negotiated and concluded in *[English]*. It may be translated into any other language for practical purposes, but the *[English]* version shall prevail in the event of any doubt.

## **20. Applicable law**

*[Select either Alternative 1 or 2]*

*[Alternative 1: “Questions relating to this contract which are not settled by the provisions contained in this contract itself shall be governed by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention of 1980, hereafter referred to as CISG) as well as the UNIDROIT Principles of International Commercial Contracts, and to the extent that such questions are not covered by CISG or the UNIDROIT principles, by reference to [specify the relevant national law].”*

*[Alternative 2: “[specify national law] law shall apply to this contract.”]*

## **Schedule 1: The Goods**

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## **Schedule 2: Minimum purchase quantities**

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## **Schedule 3: Minimum/maximum order quantities**

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## **Schedule 4: Terms of supply**

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### **1. Quantity**

1.1 *[Subject to Article 1.4 of this contract – delete if not appropriate], the quantity of the Goods to be supplied by the Supplier shall be as set out in each order submitted by the Customer (if confirmed by the Supplier).*

1.2 *[Each order shall be subject to the minimum/maximum quantities specified in schedule 3 – delete if not appropriate].*

1.3 *[The seller reserves the right to deliver up to [specify] % more or [specify] % less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered – delete if not appropriate.]*

### **2. Delivery of the Goods**

2.1 The Goods shall be delivered to the Supplier on the following basis (references being to the latest Incoterms of the International Chamber of Commerce at the date of conclusion of the contract): Ex works/FOB *[specify sea or air port]* / other *[specify it]*.

*[Comment: Delete or fill in as appropriate.]*

### 3. Inspection of the Goods

*[Option: Inspection before delivery*

*“3.1 The Supplier shall [at its own cost – delete if not appropriate] arrange for testing and inspection of the Goods at the Supplier’s premises before shipment [by – specify body]. The Supplier shall have no liability for any claim in respect of any defect in the Goods that would be apparent on inspection and which is made after shipment” – [delete if not appropriate].]*

*[Option: Inspection after delivery*

*“3.2 The Customer shall, within [seven (7) – specify any other period] days of the arrival of each delivery of the Goods at the Customer’s premises, inspect the Goods at its own cost and notify the Supplier in writing of any defect in Goods or any other matter by reason of which the Customer alleges that the Goods delivered do not comply with this contract, and which should be apparent on inspection” [delete if not appropriate].]*

### 4. Documents

The Supplier shall make available to the Customer (or shall present to the bank specified by the Customer) the following documents:

*[specify documents e.g. packing list / insurance documents / certificate of origin / certificate of inspection / customs documents / other documents].*

### 5. Transfer of risk

5.1 Risk of damage to or loss of the Goods *[and the property in the Goods – delete if not appropriate]* shall pass to the Customer in accordance with the relevant Incoterms or otherwise at the time of delivery of the Goods.

#### ***[Option: “6. Option: Retention of title***

6.1 *Notwithstanding the delivery of and the passing of risk in the Goods, or any other provision of this contract, the property in the Goods shall not pass to the Customer until the Supplier has received payment in full of the price of the Goods.*

6.2 *Until property in the Goods passes to the Customer:*

6.2.1 *The Customer shall hold the Goods on behalf of the Supplier, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier’s property;*

6.2.2 *Provided none of the events referred to in Article 7.4.2 of this contract has taken place in relation to the Customer, the Customer may resell or use up the Goods in the ordinary course of its business (in which case property in the Goods will be deemed to pass to the Customer);*

6.2.3 *Provided the Goods have not been sold or used up, the Supplier may at any time require the Customer to deliver up to the Supplier the Goods for which the Supplier has not received payment in full of the price and, if the Customer fails to do so forthwith, the Supplier may enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods; and*

6.2.4 *The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall become due and payable.”.]*

*[Comment: The Parties should take into consideration that in some legal systems a retention of title provision is not possible, or may be ineffective in the case of insolvency of the Customer, or it may not be possible to enter the Customer’s premises or obtain repossession of the Goods without a court order. A retention of title provision will not be appropriate if the contract requires payment to be made on or before delivery.]*

DATE AND SIGNATURE OF THE PARTIES

Supplier

Customer

Date . . . . .

Name. . . . .

Signature

Signature