

THIS SALE OF PRODUCT AGREEMENT (*the Agreement*) is made on < CURRENT_DATE >

Between

(1) < **PARTY_1_NAME** > whose registered office is at < PARTY_1_ADDRESS_SINGLE_LINE > (*the Seller*)

(2) < **PARTY_2_NAME** > whose registered office is at < PARTY_2_ADDRESS_SINGLE_LINE > (*the Buyer*)

It is agreed as follows:

1. Definitions

In this Agreement the following terms shall have the following meanings:

Products mean the products set out in Schedule 1;

Prices mean the prices set out in Schedule 2;

Base Year means the year < CURRENT_YEAR >;

Year means the period from 1 January to 31 December.

Force Majeure means in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, any strike, lockout or other forms of industrial action), accidents, fires, explosion, failure of equipment or machinery, delays in transportations, war, civil commotions, riots, sabotage, applicable legislation and regulations thereunder, interruptions by government.

1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. Supply and purchase

2.1 Subject to the terms and conditions of this Agreement, the Seller shall sell and the Buyer shall purchase such quantities of the Products as may be ordered by the Buyer from time to time in accordance with clause 3.3.

2.2 The Seller may from time to time make such improvements to the Products as it considers necessary to enable the Products to remain competitive and will make Products embodying such improvements available to the Buyer hereunder.

2.3 The Seller will apply such labels or other identification codes to the Products as are reasonably requested from time to time by the Buyer. There shall be no charge for the initial labelling of the Products in accordance with the Buyer's specifications but the Buyer shall reimburse the Seller for the costs of any subsequent changes as requested by the Buyer. All Products will be packaged

in accordance with the Seller's standard specifications for international shipments with such modifications as are agreed by the parties. The parties will agree on appropriate labelling for packaging to be used by the Seller.

2.4 The Seller will make available to the Buyer a copy of all principal written materials which are used by the Seller in the sale or marketing of the Products. In no event shall the Buyer be entitled to use the Seller's name in the marketing of the Products.

2.5 Whilst the Seller agrees to take all such steps as may be reasonably required to fulfil its obligations under this agreement in the normal course, the Seller shall not be obliged to give the Buyer any priority over any other Buyer of the Seller with regard to the supply or delivery of the Products.

3. Purchase orders

3.1 For any Product the Buyer wishes to purchase pursuant to this Agreement, the Buyer shall transmit a written purchase order to the Seller at the following address:

< PARTY_1_ADDRESS_MULTI_LINE >

< PARTY_1_EMAIL >

3.2 In each Year, the Buyer shall place orders with the Seller for at least < MINIMUM >% of the volume of the Buyer's purchases of Products in the Base Year. For the purposes of this Clause, the Buyer's purchases of the Products in the Base Year shall be calculated by reference to the monetary value of the Products purchased by the Buyer in the Base Year as shown in Schedule 4.

3.3 The Buyer shall, not less than < ORDER_DAYS > days before the beginning of each month, give the Seller its order for the Products to be delivered by the Seller to the Buyer during that month. Each order so given shall be final upon acceptance of that order by the Seller, except that the Seller may at its discretion accept an amendment to an order made by the Buyer within ten days after the order is given.

3.4 The purchase order shall set out the identity and quantity of Products to be purchased by the Buyer, the requested delivery schedule, Prices and shipping instructions. All Products will be supplied subject to the standard terms and condition of sale from time to time of the Seller, (except that, if any provision of those terms and conditions of sale is inconsistent with any provision of this Agreement, the latter shall prevail). A copy of such terms and conditions in force at the date hereof is set out in Schedule 3. Any pre-printed terms on the Buyer's purchase order, specifications or any other document issued by the Buyer and any additional, different or conflicting terms or conditions of the Buyer shall be wholly inapplicable, and the terms of this Agreement shall prevail.

3.5 Change requests from the Buyer to existing purchase orders should include information about the effects on the future requirements. If the Buyer requests an increase in the quantity of Products covered by a purchase order, it should identify any proposed addition or adjustment to the existing forecast; if the

Buyer requests a decrease in a purchase order, it should identify any proposed reduction or adjustment to the existing forecast.

3.6 Notwithstanding the forecast and ordering procedure set out in Clause 4, the Seller will use its reasonable good faith efforts to fulfill change requests by the Buyer to increase the quantity of a purchase order. A change request by the Buyer to decrease the quantity of a purchase order or a cancellation of a purchase order may be subject to cancellation charges as reasonably determined by the Seller. Unless otherwise indicated by the Buyer, no portion of a purchase order shall be deemed cancelled unless expressly stated by the Buyer or unless the Products to be shipped thereunder have not been picked up by the Buyer's carrier within 30 days following the scheduled delivery date.

4. Forecast and ordering procedure

4.1 The forecast data submitted by the Buyer is a planning document to assist the Seller in planning its manufacturing capacity and material requirements to meet the Buyer's demand for Products.

4.2 The Seller agrees to maintain sufficient manufacturing capacity at its facilities to meet the Buyer's Product requirements as set out in the annual forecasts pursuant to this clause 4.

4.3 The Buyer shall notify the Seller in writing:

- (a) its estimated orders of the Products for each calendar year, at least 1 months prior to that year;
- (b) its estimated orders of the Products for each month, at least 4 weeks prior to that month; and
- (c) any revisions to those estimates, forthwith after such revisions are made.

5. Delivery

5.1 The Seller shall deliver Products < INCOTERMS > to < PLACE_DELIVERY > (Incoterms). Risk and Title to the Products shall pass to the Buyer upon delivery to the carrier. Shipping information from the Seller will be sent to the Buyer no later than 3 business days after the shipment leaves the Seller's facility. The shipping information will include the model number and quantities, method of shipment (air-land), date of shipment, shipment number, and any other information allowing easy identification of a delayed or lost shipment.

5.2 The Seller shall use all reasonable endeavours to deliver each of the Buyer's orders for the Products on the date specified in the purchase order, but the time of delivery shall not be of the essence and if, despite those endeavours, the Seller is unable for any reason to fulfill any delivery of the Products on the specified date, the Seller shall not be deemed to be in breach of this Agreement or have any liability to the Buyer unless and until the Buyer has given < ORDER_DAYS > days written notice to the Seller requiring the delivery to be made and the Seller has not fulfilled the delivery within that period.

5.3 Any claim by the Buyer for any shortages in any shipment must be reported to the Seller within thirty (30) days of receipt of said shipment by the Buyer. If no shortage is reported within such period, it shall be conclusively deemed that the Buyer received that quantity of Products shown on the Seller's shipping documentation.

5.4 The Buyer shall pay reasonable shipping or delivery costs. The Seller shall be responsible for packaging, shipping, safe delivery, tracking and shall bear all risk of damage or loss until the Products are delivered to Buyer.

6. Pricing

6.1 The Prices applicable to the Products are set out in Schedule 2.

6.2 The Prices shall be firm for orders placed by the Buyer during the first month. For each subsequent month during the term of this Agreement, the Seller shall be entitled to vary the prices for the Products. The Seller shall give the Buyer not less than three months' notice in writing before any such variation shall take effect.

6.3 The Prices are based on the assumption that the Buyer will place purchase orders for shipment in < BATCH > of Products. If the Buyer places purchase orders for shipment in less than < BATCH > of Products, such Prices shall be retroactively increased for all Products included in such purchase orders accordingly.

6.4 The Seller may from time to time allow retrospective volume rebates on the Products as notified by the Seller to the Buyer from time to time.

6.5 The Prices for all Products shall be exclusive of any costs relating to the packaging, carriage and insurance of the Product.

The Buyer shall be liable for the payment of the above costs.

7. Payment

7.1 Invoices shall be issued and dated by the Seller on shipment. Payment shall be made by credit transfer in < CURRENCY > within < DAYS > days from date of invoice (**Due Date**) in favour of such bank account as shall be nominated by the Seller.

7.2 If the Buyer fails to pay the amount of any invoice on the Due Date:

(a) the amount outstanding in respect of that invoice shall bear interest from the Due Date to the date on which payment in full is received by the Seller at an annual rate of **2 %** above the base rate from time to time of < JURISDICTION_STATE >'s Bank; and

(b) the Seller shall be entitled to suspend deliveries of the Products until the amount outstanding has been received by the Seller from the Buyer.

8. Product availability

The Seller shall use all reasonable endeavours to maintain sufficient stocks of the Products to fulfill its obligations under this Agreement.

9. Term and termination

9.1 This Agreement shall become effective on the date of its execution and shall have a term of three (3) years from its effective date subject to earlier termination as provided herein. At the expiration of the three (3) year term, this Agreement may be renewed for subsequent terms of one (1) year each unless terminated by either party upon not less than ninety (90) days written notice.

9.2 If either party should default in the performance of any material obligation assumed under this Agreement (an **Event of Default**), then the non-defaulting party may give written notice to the defaulting party which notice shall specify the Event of Default. After receipt of such notice, the defaulting party shall have a period of 30 days in which to cure the Event of Default. If such Event of Default is not cured within such period, then the non-defaulting party may terminate this Agreement at any time upon written notice to the defaulting party. Any such termination shall be without prejudice to any other rights which the non-defaulting party may have as a result of any breach of this Agreement.

9.3 Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:

(a) an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

(b) that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

(c) that other party goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligation imposed on that other party under this Agreement);
or

(d) that other party ceases, or threatens to cease, to carry on business.

9.4 This Agreement may terminate at any time with the written agreement of both parties.

9.5 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision.

9.6 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

9.7 Upon the termination of this Agreement for any reason, subject as otherwise provided in this Agreement and to any rights or obligations which have accrued

prior to termination, neither party shall have any further obligation to the other under this Agreement.

10. Warranties; limitation of liability

10.1 The Seller undertakes to replace any Products proved to its reasonable satisfaction to be defective provided that:

- (a) the Buyer promptly informs the Seller on the discovery of the alleged defect and returns the Products, carriage paid, with a full written report on the defect to the Seller as soon as possible and no later than 4 weeks after delivery;
- (b) the Products have been stored with all proper care and in accordance with the Seller's recommendations;
- (c) the defect derives solely from the Seller's materials; and
- (d) the Buyer has paid for the Products in full.

10.2 The Seller will have 14 days from the date of return of the Products to either issue a refund or replace the defective Products. The Seller shall be responsible for the return delivery costs to the Buyer.

10.3 Subject as provided in clause 10.1, no term, condition or warranty (whether express or implied) as to the nature, quality or fitness of the Products for any purpose or their conformity with any sample shall be part of any contract between the Seller and the Buyer. The Buyer acknowledges that the Seller has not given any warranty that the Products are fit for a particular purpose or will achieve any particular performance criteria.

10.4 In no event shall the Seller be liable for any indirect, special, incidental or consequential damages (including loss of profit) resulting from the Seller's performance or failure to perform hereunder or the furnishing, performance, or use of any Products or services sold pursuant hereto whether due to a breach of contract, breach of warranty, the negligence of the Seller or otherwise.

11. Confidential information

11.1 If the Seller and the Buyer exchange Confidential Information in performing their respective obligations under this Agreement, such Confidential Information shall be used solely for purposes consistent with this Agreement.

11.2 Confidential Information, if disclosed in written form, shall be clearly marked with the discloser's name and "confidential", "proprietary" or the substantial equivalent thereof. If orally disclosed, Confidential Information shall be summarised in written form and clearly marked with the discloser's name, "confidential", "proprietary" or the substantial equivalent thereof and delivered to the recipient within thirty days from the date of disclosure.

11.3 Except as may be otherwise agreed to in writing, such Confidential Information shall be maintained as confidential by the receiving party. The

receiving party may disclose Confidential Information on a need-to-know basis to such party's employees who agree in writing to maintain the confidentiality of the disclosing party's Confidential Information with the same degree of care as applies to the receiving party's own Confidential Information.

11.4 For the purpose of this Clause, **Confidential Information** means any information acquired concerning the other party or its affairs, save that neither party shall be obligated to maintain in confidence any information received from the other party if the information:

(a) was in the possession of or was known to such party prior to its receipt from the other party; or

(b) is independently developed by such party without the utilisation of such Confidential Information; or

(c) is or becomes public knowledge without the fault of such party; or

(d) is or becomes available to such party from a source other than the other party; or

(e) is received by such party after notification to the other party that it will not accept any further information.

11.5 The terms and conditions of this clause shall survive the termination for any reason whatsoever of this Agreement for a period of five (5) years.

11.6 The Parties agree to not post any negative information about the other arising out of this Agreement on any online forum or website without providing advance written notice of the intended content thereof and providing the other party with an opportunity to resolve any issues between the parties amicably.

12. Force majeure

12.1 If either party is affected by Force Majeure, it shall promptly notify the other party of the nature and extent of the circumstances in question.

12.2 Notwithstanding any other provision of this Agreement, neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, for any delay in performance or other non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly. The party invoking Force Majeure shall use all reasonable efforts to remedy the situation so far as possible and subject thereto will comply with its obligations hereunder, provided that there shall be no obligation on a party so affected to settle labour disputes or to test or to refrain from testing the validity of any order, regulation or law in any court having jurisdiction. The party invoking Force Majeure shall give prompt notice of the cessation of the cause thereof.

12.3 Nothing in this clause 12 shall relieve any party of its obligation to make payments when due hereunder.

12.4 If an event of Force Majeure shall occur and continue for six months so as to frustrate the purpose contemplated by this Agreement, or if there is no reasonable possibility that such event will be cured within a six month period, then either party shall be entitled to terminate this Agreement.

13. Amendments

This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto or, in the case of a waiver, by the party waiving compliance.

14. Subcontract

Subject to the Buyer's consent, which shall not be unreasonably withheld, the Seller shall be entitled to carry out its obligations under this Agreement through any agents or sub-contractors appointed by it in its absolute discretion for this purpose.

15. Assignment

The rights and benefits of the Buyer under this Agreement shall not be assigned, mortgaged, charged, transferred or otherwise disposed of without the prior written consent of the Seller.

16. Severability

If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part the other provisions of this Agreement and the remainder of the effective provisions shall continue to be valid.

17. Notices

17.1 Any notice or other formal communication to be given under this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be:

(a) sent by e-mail with receipt set out in clause 17.2; or

(b) delivered by hand or sent by prepaid recorded delivery, special delivery or registered post to the relevant address in clause 17.2

In each case, it shall be marked for the attention of the relevant party set out in clause 17.2 (or as otherwise notified from time to time under this Agreement). Any notice so served by hand, e-mail, fax or post shall be deemed to have been duly given:

- a. in the case of delivery by hand, when delivered;
- b. in the case of fax or electronic mail on a Business Day prior to 5.00 pm, at the time of receipt;
- c. in the case of prepaid recorded delivery, special delivery or registered post, at 10am on the second Business Day following the date of posting

provided that in each case where delivery by hand or by fax occurs after 5pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 9am on the next following Business Day. References to time in this clause are to local time in the country of the addressee.

Address of notices

17.2 The addresses of the parties for the purpose of clause 17.1 are:

(a) Seller:

Address: < PARTY_1_NAME >

e-mail address: < PARTY_1_ADDRESS_MULTI_LINE >

For the attention of: < PARTY_1_CONTACT >

(b) Buyer:

Address: < PARTY_2_NAME >

e-mail address: < PARTY_2_ADDRESS_MULTI_LINE >

For the attention of: < PARTY_2_CONTACT >

English language

17.3 All notices or formal communications under or in connection with this Agreement shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

18. Settlement of disputes

Amicable Settlement

18.1 If any dispute, controversy or claim between the parties arises out of or in connection with this Agreement, they shall use all reasonable endeavours to resolve the matter amicably. If one party gives the other notice that a material dispute has arisen and the parties are unable to resolve the dispute within a period of thirty (30) days of service of the notice, then the dispute shall be referred to the respective Chairmen / Chief Executives of the parties. Neither party shall resort to dispute resolution below against the other under this Agreement until thirty (30) days after the referral. This shall not affect a party's right, where appropriate, to seek an immediate remedy for an injunction,

specific performance or similar court order to enforce the obligations of the other party.

Dispute Resolution

18.2 This Agreement is governed by the laws of the Hong Kong Special Administrative Region.

18.3 The parties submit to the non-exclusive jurisdiction of the Hong Kong courts.

19. Counterparts

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

20. No rights under Contracts (Rights of Third Parties) Ordinance

A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.

As witness this Agreement has been executed by or on behalf of the parties the day and year first before written.

< PARTY_1_SIGN_BLOCK >

< PARTY_2_SIGN_BLOCK >

SCHEDULE 1 Products

< PRODUCT_DESCRIPTION >

SCHEDULE 2 Prices

< PRICE >

SCHEDULE 3 Seller's Terms and Conditions of Sale

1. Payment

1.1 The prices contained in the Seller's price lists do not include any applicable sales duties that may be chargeable in connection with the supply of the Products to the Buyer which the Buyer shall pay in addition to the price. These prices are (unless otherwise specified) exclusive of any packing, insurance, delivery or transportation charges.

1.3 If full payment is not made on the due date then interest shall thereafter be payable on the outstanding balance at the rate of 2 percent above the minimum lending rate of < JURISDICTION_COUNTRY >'s Bank from time to time in force per month compounded monthly until payment.

1.4 The Seller shall have the right to invoice the Buyer in respect of a partial delivery of the Products.

1.6 The Seller shall have the right to suspend delivery if it reasonably believes that the Buyer will not make payment in accordance with these terms.

2. Delivery

2.1 The Seller shall procure the delivery of the Products to the Buyer by any means or route which it selects and (unless otherwise agreed in writing) the Seller may deliver the Products in such batches or instalments as it considers expedient.

2.2 Dates and times given for the delivery of Products are given as estimates only and shall not constitute a term or condition of any contract between the Seller and the Buyer, and any delay in completion shall not constitute a breach of such contract and time shall not be of the essence. While the Seller will endeavour to meet any time estimate, it reserves the right to amend any estimate without notification and the Seller shall not be liable to the Buyer for loss or damage resulting from delay in delivery or failure to deliver from any cause including negligence.

2.3 If a contract is for the delivery of Products by instalments then failure by the Seller to deliver one or more instalment (s) shall not entitle the Buyer to claim compensation or to terminate or suspend such contract and/or reject those or subsequent deliveries.

2.4 If the Buyer does not accept delivery of the Products in accordance with this paragraph 2, the Seller may arrange for the storage of the products on the Buyer's behalf but without the liability for any loss or damage occurring after the agreed delivery date. The Buyer shall, in addition to the price, pay on demand all reasonable charges for storage, insurance and transport occasioned by its failure to take delivery.

2.5 The Seller shall not be liable for any shortage on receipt by the Buyer unless notified in writing within 30 days. The Seller shall not be liable in any event for any loss or damage to Products in transit. If, however, the Seller is notified of a claim relating to the loss of or damage to Products in transit within such time limit as the carrier may impose, it will endeavour to pass on to the Buyer the benefit of any claim the Seller may have against the carrier.

3. Warranty

The Seller undertakes to replace any Products proved to its reasonable satisfaction to be defective **provided that:**

- (a) the Buyer promptly informs the Seller on the discovery of the alleged defect and returns the Products, carriage paid, with a full written report on the defect to the Seller as soon as possible and no later than 4 weeks after delivery; and
- (b) the Products have been stored with all proper care and in accordance with the Seller's recommendations; and
- (c) the defect derives solely from the Seller's materials and not for any reason referred to in paragraph 2.5 above; and
- (d) the Buyer has paid for the Products in full.

SCHEDULE 4
Buyer's Purchase of Products from Seller in Base Year