

## General Conditions of Sale

### 1. Governing Terms and Conditions

- 1.1. Except as may otherwise be specifically provided for by written agreement accepted by both parties, these terms and conditions of sale ("Conditions") and the sales contract ("Sales Contract") and any product specifications included in the Sales Contract or provided under separate cover ("Product Specifications") constitute the entire agreement ("Agreement") between the seller ("Seller") and the buyer ("Buyer") with respect to the supply of the product described in the Sales Contract and Product Specification, as the case may be, and in the quantity stated in the Sales Contract attached to these Conditions ("Material"). All other terms, conditions, warranties and any other terms contained in the documents of the Buyer, including but not restricted to, terms and conditions, forms and purchase orders of the Buyer are excluded except those expressly provided in this Agreement.
- 1.2. In the event of any inconsistency in the Agreement, the order of priority shall be: (i) Sales Contract, (ii) Product Specifications (if any); and (iii) these Conditions.

### 2. Payment

- 2.1. Unless otherwise agreed in writing, the Buyer must pay the Seller either:
  - a) by the Payment Due Date, which shall be the date specified in the Sales Contract as being the due date for payment;
  - b) immediately if the Seller considers that an event specified in clause 9.1 has occurred or is likely to occur
- 2.2. If full payment is not made by the Payment Due Date, the Seller may charge interest from the Payment Due Date until full payment is made on the overdue payment at 6% per annum above the one month US LIBOR rate quoted by Bloomberg on page LR on the Payment Due Date.
- 2.3. Seller shall have right to review the Buyer's credit worthiness and, at its sole discretion, may accelerate the terms of payment under the Agreement and/or demand immediate full payment for Material delivered, and may require cash payments or satisfactory security as may be deemed by the Seller for future deliveries.
- 2.4. Except as otherwise expressly provided in this Agreement, the parties shall bear their own expenses incurred in enforcing their respective rights under this Agreement.

### 3. Title

- 3.1. Title to and ownership of the Material and any products manufactured from the Material ("Products") does not pass to the Buyer until all amounts owing by the Buyer to the Seller under this Agreement (and all cheques or negotiable instruments) have been paid (the "Relevant Date") and until the Relevant Date:
  - a) the Buyer shall hold the Material and Products as bailee for the Seller and, if required by the Seller, store the Material and Products in such a manner that they are clearly identifiable as the property of the Seller; and
  - b) if the Buyer sells the Material, or any Products, the Buyer's right to receive payment from its customer will be held on trust for the Seller and any proceeds of sale will be the property of the Seller and the Buyer will hold the proceeds of any such sale on account of the Seller and keep the proceeds separately from its own money.
- 3.2. The Buyer acknowledges that the Seller may be entitled under relevant law to register its interest in the Material as a security interest and may be required, for that purpose, to file financing statements necessary and other relevant information, as appropriate, in order to evidence the Seller's ownership of the Material. The Buyer further agrees to cooperate with the Seller to ensure that such financing statements are properly filed and/or recorded and to co-operate with the Seller, as necessary, to perfect or continue the perfection of its security interest.

### 4. Risk

- 4.1. Risk in the Material passes to the Buyer from the time of delivery. The Seller is not liable to the Buyer for any loss or damage or deterioration of the Material after delivery, even if the Seller arranges freight.
- 4.2. Incoterms-2010 edition – ICC Official Rules for the Interpretation of Trade Terms -, or a successor publication by the International Chamber of Commerce, applies to matters not covered in this Agreement. In the event of any inconsistency between this Agreement and the incoterms 2010, the Agreement prevails. The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to this Agreement.

## 5. Limitation of Liability

- 5.1. Any claim which the Buyer may have against the Seller under this Agreement is deemed to be waived unless the Buyer gives written notice of that claim to the Seller within 30 days after the Material is unloaded at the port of discharge or place of delivery and gives the Seller a reasonable opportunity to investigate the claim.
- 5.2. Notwithstanding any provision of this Agreement to the contrary, the Seller's total aggregate liability to the Buyer in relation to a shipment of Material, whether arising out of or in connection with this Agreement, under statute, in tort (for negligence or otherwise) or any other basis in law or equity shall not exceed the purchase price of that shipment paid by the Buyer ("the Seller's Limitation"). The Seller shall have the option (in the absence of any alternative solution agreed between the parties) either of replacing or repairing the Material; or paying damages to the Buyer, damages which, depending on the Buyer's loss as determined by the Seller acting reasonably, may be less than the Seller's Limitation but which in any event shall not exceed the Seller's Limitation.
- 5.3. The Buyer shall exercise reasonable endeavours to mitigate any losses, suffered, sustained or incurred which might be the subject of a claim by the Buyer against the Seller under this Agreement.
- 5.4. Notwithstanding any provision of this Agreement to the contrary, to the maximum extent permitted by law, the Seller is not liable for any consequential loss, loss of opportunity, loss of revenue, loss of profit or anticipated profit, loss of contract, loss of goodwill or loss arising from business interruption, special or contingent losses or damages whether arising out of or in connection with this Agreement under statute, in tort (for negligence or otherwise) or any other basis in law or equity.

## 6. Warranties and Descriptions

- 6.1. The Buyer must accept the Material supplied under the Agreement if it is in accordance with the description stated in the Agreement and within the tolerances with regard to the quantity, weight, dimensions, chemical composition, physical properties and finish as may be specified in the Sales Contract or Product Specifications, as the case may be, except where the Buyer, pursuant to clause 6.2, disputes that the Material supplied is within specification.
- 6.2. For the purpose of clause 6.1, manifests and certificates of analysis that the Seller provides to the Buyer are deemed to be conclusive evidence of the matters stated in them except where the Buyer disputes the quality of the Material supplied as stated in the manifests and certificates of analysis

("Quality Dispute") by providing written notice of the Quality Dispute to the Seller within 21 days of delivery of the Material. The Seller and Buyer shall then exercise reasonable endeavours to resolve the Quality Dispute, failing which the Quality Dispute shall then be referred to an independent expert mutually agreed between the parties.

Should the independent expert determine that the Material does not meet the Product Specifications, the Seller and Buyer shall exercise reasonable endeavours to reach agreement on possible solutions. If the parties fail to reach agreement within 60 days of the independent expert's decision, the Buyer may commence legal proceedings in an appropriate court.

- 6.3. Subject to any written warranty provided by the Seller or any rights which cannot be excluded by law, the Agreement expressly excludes any warranties, conditions, liabilities or representations (express or implied) as to the quality of the Material or its fitness for any purposes (whether or not made known to the Seller). The Agreement is not a sale by sample.
- 6.4. The Seller warrants only that the Material conforms to the description stated in the Agreement (subject to the tolerances referred to in clause 6.1) and that it will give good title to the Material.
- 6.5. The Buyer warrants that by instructing the Seller to supply the Material under the Agreement it will not cause the Seller to infringe any letters patent, registered design, trademarks or trade names in the performance of the Agreement.

## 7. Intellectual Property Infringement

- 7.1. No license is granted for the use of trademarks or brands under which Material is delivered and these may not be used by Buyer for the Products manufactured from the same nor for any other purpose, especially advertising purposes, without the Seller's prior written approval.
- 7.2. Seller reserves all rights, title, interest and copyright to specimens, illustrations, drawings and other documents as well as tools which include embossing dies, press rollers or permanent moulds, developed by Seller. This applies if Buyer pays a portion of the costs for such articles.
- 7.3. In the event that the Material was manufactured and sold by Seller according to drawings or other specifications of Buyer, Buyer will indemnify Seller against all damages, penalties, costs and expenses with respect to any suit alleging that the manufacture or sale of Material under the Agreement infringes any patent, copyright or

trademark.

7.4. Should Seller Manufacture Material from confidential drawings and specifications supplied and identified as such by Buyer, Seller will maintain the confidentiality of these drawings and specifications and shall not, without the Buyer's prior written consent, disclose the same to third parties. Seller's confidentiality obligation under this clause 7.4 shall remain in force for as long as Seller Supplies Material to Buyer and for a period of three years thereafter.

## 8. Indemnity

8.1. The Buyer agrees to release, hold harmless, indemnify and defend the Seller against all actions, claims, demands, liabilities, losses, damages, costs, charges and expenses ("Liabilities") suffered or incurred by the Seller as a result of or in connection with any of the following:

- a) the Seller's compliance with the Buyer's instructions regarding the Material;
- b) the Buyer's failure to provide or display safety information on or relating to the Material, comply with laws relating to the use, sale, marketing, labelling or marking of the Material or detect and bring to the Seller's attention matters for which the
- c) Seller may become liable, whether for negligence, under legislation or otherwise;
- d) any statement the Buyer makes about the Material without the Seller's written approval;
- e) the use of Material by the Buyer or a third party;
- f) the Buyer's negligence, wilful misconduct or breach of this Agreement or
- g) any breach by the Buyer of the warranty set out in clause 6.5.

8.2. The Buyer agrees that

- a) the Material is not of a kind ordinarily acquired for personal, domestic or household use or consumption; and
- b) the Buyer is acquiring the Material for resupply or for using it or transforming it in the course of a process of production or manufacture in the Buyer's business.

8.3. Each indemnity provided by the Buyer is a continuing obligation separate and independent from the parties' other obligations and survives the expiry or earlier termination of this Agreement.

## 9. Cancellation

9.1. The Seller may by written notice immediately cancel the Agreement for the delivery of any future instalment of Material and re-sell the Material and/or demand immediate payment of all amounts outstanding (whether or not then due and payable):

- a) if the Buyer fails to perform or observe any material term of this Agreement (including payment terms);
- b) if the Buyer, in the reasonable opinion of the Seller, has unsatisfactory credit worthiness;
- c) if the Buyer has any of its property seized by a holder of any security;
- d) if an Insolvency Event occurs with respect to the Buyer; or
- e) if any of the situations in clause 9.1(b), (c) or (d) apply to any Affiliate of the Buyer (as defined in clause 16.6).

For the purpose of this clause, "Insolvency Event" means, in relation to party:

- I. that party becoming insolvent or bankrupt,
- II. the appointment of a liquidator, provisional liquidator or administrator appointed to the party;
- III. the party passes a resolution for winding up, proposes a compromise or scheme of arrangement with its creditors or files for protection from its creditors;
- IV. if a receiver, receiver and manager, official manager, mortgagee in possession or other external administrator is appointed to the party or any of its property;
- V. the party comes under administration (whether voluntary or involuntary);
- VI. the party becomes unable to pay its debts as they fall due; or
- VII. anything occurs in relation to the party which is (under the laws of any applicable jurisdiction) analogous to any of the events just described.

9.2. Upon an event listed under clause 9.1, the Seller shall also have the right to, as the case may be:

- a) suspend or withhold any future shipments until the event listed under clause 9.1 has been corrected;
- b) set-off any amounts or obligations it, or any of its Affiliates (as defined in clause 16.6), owes or has toward the Buyer or any of its Affiliates, with any amounts or obligations the Buyer or any of its Affiliates owes or has toward the Seller or any of its Affiliates, in connection with any business dealing between them under this Agreement or any other contract;
- c) obtain from the Buyer any other losses or damages, including reasonable attorney's fees but excluding any other indirect, incidental, consequential, special, exemplary or punitive damages, incurred in connection with the event listed under clause 9.1;
- d) any other remedies the Seller may have whether by agreement, operation of law or otherwise.

9.3. The Seller may extend the time of delivery or shipment (and make alternative delivery or shipping arrangements), or cancel the Agreement if the Seller does not receive the following in ample time to enable it to make delivery or shipping arrangements for the delivery of the Material:

- a) marking and shipping instructions from the Buyer;
- b) import certificates and documents from the Buyer required to obtain governmental licences and authorisation in order to make shipments; or
- c) advice that an irrevocable letter of credit (if applicable) has been issued by a Bank and upon terms acceptable to the Seller. A draft of any such irrevocable letter of credit shall be provided to the Seller for approval at least 10 days prior to its issuance.

9.4. If the Seller cancels the Agreement under clauses 9.1 or 9.3, the Seller may stop the delivery or shipment or further delivery or shipment of the Material and:

- a) recover from the Buyer any sum due at the time of cancellation of the Agreement and any

loss or damage suffered by the Seller as a result of cancelling the Agreement; or

- b) if the Material has been produced specifically for the Buyer, or is in the process of being produced the Buyer shall pay to the Seller as liquidated damages the full Agreement price thereof and any costs incurred by the Seller.

9.5. The Seller may cancel the Agreement by giving written notice if the Material remains undelivered or uncollected after 14 days from when the Seller informs the Buyer that the Material is ready for collection.

9.6. The Buyer may by written notice immediately cancel the Agreement for the delivery of any future instalment of Material:

- a) if the Seller fails to perform or observe any material term of this Agreement and fails to remedy the breach within a reasonable time after being notified of the breach by the Buyer; or
- b) if an Insolvency Event occurs with respect to the Seller.

## 10. Delivery

10.1. Unless expressly set forth on the Sales Contract or otherwise agreed to by the parties in writing, the Material shall be delivered "CPT (named place of destination).

10.2. The Seller must use its best endeavours to effect delivery of the Material by the date that is specified in the Agreement as being the delivery due date (the "Delivery Due Date").

10.3. The Seller is not liable for any loss or damage accruing to the Buyer as a result of late delivery.

10.4. The Buyer must accept and pay for the Material even if the Seller delivers late.

10.5. The Seller may deliver the Material in instalments. Each instalment will be treated as a separate shipment under this Agreement. However, if the Buyer does not pay for an instalment, the Seller may treat the non-payment as a breach of contract relating to the other instalments.

10.6. Subject to clause 10.5, the Buyer may cancel an instalment under the Agreement if the Seller fails to effect delivery of the instalment within thirty (30) days from the Delivery Due Date unless that failure to deliver is as a result of any of the reasons specified in clause 12.

- 10.7. Unless the Sales Contract specifies the means by which the Material is to be transported, it shall be transported by means determined by the Seller, at its entire discretion.
- 10.8. If the Agreement does not state a specific source of the Material, then the Seller may declare the source of the Material and this Agreement becomes a contract for the supply of Material from that source.

#### 11. Quantity and weight discrepancies

- 11.1. If the total quantity of Material delivered pursuant to the Agreement is less than the total quantity the Buyer ordered under the Agreement, the Buyer must notify the Seller in writing of the shortfall within 5 (five) days after the last delivery, otherwise the Seller will take it that the correct quantity of Material has been delivered and the Buyer must accept the Material and pay for it in full despite the shortfall.
- 11.2. If the quantity of Material delivered is more than the amount the Buyer ordered, the Buyer must immediately inform the Seller in writing and the Seller is entitled to charge the Buyer for the excess or recover the excess from the Buyer.
- 11.3. For weight discrepancies, if any, the Buyer will notify the Seller within 5 (five) days from arrival or release at delivery point, in case determined weights differs by more than 0.2 percent from the invoiced weights, provided number of delivered units corresponds to number of units mentioned in transport documents. Such notice must include full details of weight protocols, also evidencing how calibration of used weight facility was ensured. The Seller will have the right to request reweighing of the Material in the presence of his nominated representative. Finding established by such procedures described above shall be binding as final for both parties. Costs thereof shall be borne by the losing party. In all other cases, the weight of the delivered metal specified in the bill of lading, manifest, certificate of weight and analysis or other similar document, or warehouse weight, as applicable, shall be final, conclusive and binding on the parties, except for fraud or manifest error.

#### 12. Force Majeure

- 12.1. Neither the Seller nor Buyer shall be liable for any delay in performing or failure to perform their respective obligations under this Agreement (except for delay or failure to pay money when due) caused by any circumstance beyond the reasonable control of, and not caused by the fault of, the Seller and/or its source supplier or the Buyer ("Force Majeure").

A party who is unable to deliver or to accept delivery in whole or in part because of an event of Force Majeure shall not be obliged to deliver or take delivery of that part (as the case may be) or be subject to any liability in respect of that part for the duration of the event of Force Majeure and its

effects, if any.

- 12.2. Upon the occurrence of any *event* of Force Majeure, the party affected by the *event* of Force Majeure shall within 10 days of the occurrence notify the other party hereto in writing, with such notice to contain full particulars of the Force Majeure, including its nature and likely duration and effect on the affected party's compliance with its obligations, a reasonable explanation of its cause, and possible means of avoidance of the event of Force Majeure.
- 12.3. For the purposes of this clause 12, events of Force Majeure include but are not limited to strikes, lock-outs or other labour disturbances, accidents, sabotage, embargo, war (whether or not declared), fire, flood, revolution, riot, civil commotion, explosion, shortage of power, breakdowns of plant or machinery, shortage of raw or other materials from normal sources of supply, act of God, and any order or direction of any local, Provincial, State or Federal Government, Government authority or instrumentality.
- 12.4. Both Seller and Buyer shall exercise reasonable endeavours to cure any *event* of Force Majeure to the extent that it is reasonably possible to do so, it being understood that the settlement of strikes, lockouts and other labour disputes shall be within the sole discretion of the party asserting Force Majeure.
- 12.5. If an *event* of Force Majeure causes a reduction in the total quantity of material the Seller is obliged to deliver pursuant to this Agreement, the Seller shall allocate its available supplies of such Material, if any, among any or all of its existing customers in a fair and reasonable manner. In addition, where the Seller is the affected party, it may (but shall not be required to) offer to supply, from other sources, Material of similar quality in substitution for the Material subject to the Force Majeure *event* in order to satisfy that quantity which would otherwise have been sold and purchased under this Agreement.
- 12.6. Failure to deliver or accept delivery of Material which is excused by or results from the operation of an *event* of Force Majeure shall not extend the term of this Agreement and the quantity of Material to be delivered and accepted under this Agreement shall be reduced by the quantity affected by such failure.
- 12.7. Where a delay in delivering or accepting delivery of Material by reason of an *event* of Force Majeure exceeds more than 120 consecutive days, either party shall have the right by written notice to cancel the quantity of Material not delivered or accepted with immediate effect, and any payment already made by Buyer to Seller for undelivered Material shall be refunded to the Buyer. However, this clause 12.7 shall not apply to any Material which has been shipped or for which a shipping berth has been firmly booked and/or which has already been loaded onto the Buyer's ship.
- 12.8. Notwithstanding anything in this clause 12, an event

shall not be regarded as an event of Force Majeure unless:

- a) it is outside the control of, and not caused by the fault of the party claiming Force Majeure;
- b) the party claiming Force Majeure has, with due diligence, taken and continues to take all proper precautions, due care and reasonable alternative measures with the object of avoiding or minimising the effects of the event in question and avoiding prevention from/delay in delivering or taking delivery of the Material (which, for the avoidance of doubt, includes, without limitation, ensuring that any contractor of the party, upon which the party is relying in its performance of any obligation under this Agreement, exercises the same level of due diligence); and
- c) the party claiming Force Majeure has given notice of the event of Force Majeure as required under clause 12.2.

### 13. Storage and Handling

If the Buyer does not collect the Material, or provide adequate delivery instructions, within 14 days of request by the Seller, or the Seller agrees to the Buyer's request to delay delivery, the Seller may charge for storage. The Buyer must pay such storage charges monthly at commercial rates. The Material will be stored at the Buyer's risk.

### 14. Indirect Transaction Taxes

- 14.1. All amounts expressed to be payable under this Agreement shall be exclusive of any Indirect Transaction Taxes, unless expressly stated otherwise. If Indirect Transaction Tax is payable in respect of the sale of tangible goods or services pursuant to this Agreement, the Buyer shall pay the Seller at the Indirect Transaction Tax amount applicable in law *governed* by the territory where the sale takes place. If applicable, the Seller shall provide the Buyer with a valid tax invoice or equivalent applicable in law governed by the territory where the sale takes place. The Seller and Buyer will cooperate to ensure so far as possible that the Indirect Transaction Tax treatment is accepted by the relevant tax authority, and will produce all necessary invoices, records and other documentation for this purpose.
- 14.2. For the purposes of this clause 14, Indirect Transaction Taxes means Value Added Tax ("VAT"), Goods & Services Tax ("GST"), Sales & Use Tax or any similar transaction, consumption or analogous tax or impost.

### 15. Dispute Resolution

- 15.1. The Buyer and the Seller acknowledge that it is their expectation that any disputes will be settled by them. Subject to clause 15.8, before resorting to external dispute resolution mechanisms, the parties must attempt to settle any dispute under the Agreement (except Quality Disputes under clause 6.2, which shall be subject to the process set out in clause 6.2) by negotiation, using the procedure set out in clause 15.2. Each party must bear its own costs in attempting to settle a dispute under clause 15.2.
- 15.2. Any disputes must be referred initially to the Buyer's relevant General Manager (or equivalent) and the Seller's General Manager, Sales and Marketing, who the parties will procure to endeavour to resolve the dispute within 10 days of the giving of notice. If the dispute is not resolved within that time period, it will be referred, to the Buyer's Managing Director (or equivalent) and the Seller's Managing Director, who will endeavour to resolve the dispute within a further 10 days or such other period as may be agreed by those persons.
- 15.3. If a dispute is not settled by the parties in accordance with clause 15.2, either party may commence mediation:
  - a) by giving notice to the other party; and
  - b) referring the matter to the International Chamber of Commerce requesting the appointment of a mediator and the conduct of a mediation pursuant to this clause.
- 15.4. The Rules of Optional Conciliation of the International Chamber of Commerce will apply to any mediation under the Agreement. Those rules and guidelines set out the procedures to be adopted, the process of selection of the mediator the costs involved and which terms are deemed to be incorporated in the Agreement. The Buyer and the Seller must comply with those rules and guidelines in connection with all matters relating to the mediation.

15.5 If an unsettled dispute is not referred to the International Chamber of Commerce within 15 days of the procedure in clause 15.2 concluding or, if so referred, the matter has not been settled by mediation within 60 days (or such other period as agreed by the parties) of the referral date, either party may commence arbitration by:

- a) giving notice to the other party; and
- b) referring the matter to the Court of Arbitration of the International Chamber of Commerce, requesting the appointment of an arbitrator and the conduct of an arbitration pursuant to this clause 15

15.6 If the matter is referred to the Court of Arbitration of the International Chamber of Commerce under clause 15.5:

- a) the Court of Arbitration of the International Chamber of Commerce will determine the place of arbitration, which will be outside the Buyer's country and the Seller's country, but will, if the New York Convention is then in force, be in a country which is a party to the New York Convention provided that if both the Seller's and the Buyer's countries are parties to the New York Convention, the place of arbitration shall be the Seller's country. The New York Convention means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, and includes any modification of the Convention or any successor to the Convention;
- b) the Rules of Arbitration of the International Chamber of Commerce will apply to any arbitration under this clause 15, and the Buyer and the Seller must comply with the rules in connection with all matters relating to the arbitration; and
- c) the decision of the arbitrator will be final and binding upon the Buyer and the Seller.

15.7 Notwithstanding the existence of a dispute, both parties must continue to perform their obligations under the Agreement, subject always to their rights of termination under the

Agreement.

15.8 Either party may commence court proceedings relating to any dispute arising from the Agreement at any time where that party seeks urgent interlocutory relief.

15.9 Other than as set out in clauses 6.2 and 15.8, neither party may commence court proceedings relating to any dispute arising under the Agreement, except to enforce any mediation settlement, agreement or arbitral award.

## 16. General

### 16.1 Notice

Notices under the Agreement must be in writing. A notice must be delivered personally or sent by facsimile transmission, electronically or post to the other party at their last known address.

### 16.2 Waiver

Even if the Seller does not insist on strict performance of the Agreement, the Seller is not taken to have waived its rights to later require strict performance. Even if the Seller provides an express waiver, this is not to be taken as a waiver of a subsequent breach of a term or condition.

### 16.3 Severability

If any provision of the Agreement is held to be invalid or unenforceable in any jurisdiction, it is, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

#### **16.4 Governing law and jurisdiction**

- a) The Agreement is governed by the laws in force in Australia. Subject to clause 16.4(b), the Seller and the Buyer both submit to the non-exclusive jurisdiction of the courts of Australia and any courts which may hear appeals from those courts.
- b) The Seller may take proceedings as it deems fit in the court of any Country, State or Territory in which the Buyer is resident or the Material is sold, delivered or situated and in such case the Buyer submits to the jurisdiction of that court.

#### **16.5. Variation**

The Seller is entitled to vary this Agreement at any time by giving Buyer written notice.

#### **16.6 Assignment**

Neither Seller nor Buyer shall otherwise than as permitted under this clause 16.6 assign directly or indirectly their rights or obligations or any part thereof under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the Seller may without the prior written consent of the Buyer assign or transfer all of its rights and obligations under this Agreement to one of its Affiliates.

The Buyer shall not enter into a factoring agreement or any similar agreement with a third party without the prior written consent of the Seller.

For the purposes of this Agreement, "Affiliate" means anybody corporate directly or indirectly Controlled by, under common Control or Controlling that party. For this purpose, "Control" shall mean the ownership directly or indirectly of greater than fifty (50) percent of the shares entitled to vote at a general meeting of a body corporate.

For the avoidance of doubt and notwithstanding anything else in this Agreement, in the case of the Seller, "Affiliate" includes:

- a) any affiliate of the Victory Group; and
- b) any unincorporated joint venture in which victory group or affiliate of Victory Group has participating interest of not less than 50%.