

**1. Interpretation**

The following definitions and rules of interpretation shall apply:

The Seller: the person, firm or company who sells the Product to the Buyer. Should the sale of the Product be made through an agent of the Seller, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if the agent were itself the principal, whether such principal be disclosed or undisclosed, and whether or not such agent purports to contract as agent only. Both principal and agent shall each be deemed to be a Seller for the purposes of the Contract and shall be jointly and severally liable for all obligations under this Contract.

The Buyer: Ethemex Limited, (Company Number 03757834) a company registered in England and Wales whose registered office is at Studio 2, 58 Waldo Road, London, NW10 6AX, UK.

The Contract: any contract between the Seller and the Buyer for the sale and purchase of Product consisting of the purchase order and these General Terms and Conditions of Purchase.

The Product: any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them).

The International Rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms 2020) as specified in the purchase order shall apply but where they conflict with the Contract, the Contract shall prevail.

**2. Application of Terms**

2.1 These Terms and Conditions shall apply to all the Buyer’s purchases of Product. Any variation of these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by a Director of the Buyer.

2.2 The Contract shall be deemed to incorporate these Terms and Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Seller purports to apply under any sales order, confirmation of order, specification or other document).

2.3 No terms or conditions endorsed on, delivered with or contained in any sales order, confirmation of order, specification or other document shall form part of the Contract .

**3. Description/Quality/Quantity**

3.1 The volume, quality and description of the Product to be delivered to the Buyer shall be as set out in the purchase order which forms part of the Contract.

3.2 If no method of determination is specified the delivered volume and quality shall be determined by a method chosen by the Buyer in his absolute discretion and shall be binding on both parties.

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3.3 Without prejudice to clause 6.4, if there is any variance in volume from that stated in the bill of lading which exceeds any variance permitted by Customs and Excise and which results in any excise or custom duty being payable then such any such duty shall be strictly for the account of, and payable by the Seller.

3.4 If there is any dispute as to quality of the Product supplied by the Seller then (subject to the same being available) the dispute shall be resolved by reference to the samples taken by an independent surveyor or other third party before and after the time at which risk in the Product passed to the Buyer. The samples shall be supplied to an independent expert appointed by the Buyer and the independent expert's decision as to compliance with quality shall be binding on both parties. If the Buyer claims that the Product is not of the required quality and the Seller has failed to supply a sample of the Product taken by an independent surveyor or other third party at the time immediately before the risk passed to the Buyer then the Seller shall be deemed to have failed to supply Product of the requisite quality.

**4. Price**

The purchase price of the Product is a fixed price as set out in the Contract and cannot be varied or modified without the express written agreement of the Buyer.

**5. Payment**

5.1 The payment terms, including the method of payment and any payment documents required to be presented by the Seller, are as set out in the Contract.

5.2 In the event that the Buyer has prepaid for any Product and:  
 (a) that Product is rejected due to a failure to meet the requisite quality criteria; or  
 (b) the volume delivered is less than the volume specified in the purchase order; or  
 (c) the Contract is terminated by the Buyer in accordance with clause 12;  
 then the Seller shall immediately on demand refund the relevant element of the price relating to (as appropriate) the quantity rejected or the volume undelivered.

5.3 Any payment not made by either party to the other in full on the due date shall bear interest from the due date until the date of payment at the rate of 4% per annum. If the Buyer has prepaid for any volume of Product which is subject to clause 5.2 then the Seller shall pay interest on the difference between the value paid for by the Buyer and the value of the Product actually delivered at the rate of 4% per annum from the date of prepayment by the Buyer until the date that the overpayment is refunded in full to the Buyer.

5.4 Without prejudice to clause 5.2 the Seller acknowledges that in respect of all amounts due under the Contract the Buyer shall be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

**6. Delivery**

6.1 Time is of the essence for delivery of the Product and save where delivery is prevented, delayed or hindered by reason of force majeure the Seller will comply with all delivery dates and times specified in the Contract.

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6.2 Should the Contract provide for the Product to be delivered by way of instalments and the Product delivered under one instalment is damaged, off-specification or short-delivered the Buyer shall be entitled to refuse to accept any further instalments from the Seller until the defective or short delivered Product has been replaced, remedied or the deficiency made good.

6.3 It is the responsibility of the Seller at its risk and expense to obtain all necessary export licences and other authorisations, licenses and permits and to carry out all customs formalities necessary for the export of the Product. If the Seller fails to comply with this obligation by the due date for delivery to the Buyer then the Buyer may refuse to accept delivery of the Product.

6.4 If Product delivered to the Buyer fails to comply with any implied or express warranty, is off-specification or not of the required quality or is short delivered the Buyer shall notify the Seller as soon as reasonably practicable and in any event (in the case of any issue reasonably discoverable on delivery which shall include any short delivery) not more than 40 days from delivery or (in the case of an issue not reasonably discoverable on delivery) within 40 days of discovery. Following any such notification in accordance with this clause the Buyer shall permit the Seller or any party acting as the representative of the Seller access to the Product to inspect the Product and/or provide such other evidence as to, the failure to comply with warranty or specification or, short delivery, as may be reasonably requested by the Seller. Following any such inspection and/or investigation unless the parties subsequently agree that the Product delivered to the Buyer has not failed to comply with warranty, or was not off-specification or was of the required quality or not short delivered then the Seller shall at the Buyer's option:

- (i) replace the Product or remedy the short delivery:
  - with a subsequent instalment if the Contract provides for deliveries by instalments, or
  - as soon as is reasonably practicable if the Contract does not provide for deliveries by instalments or if it was the last instalment delivered under the Contract terms; or
- (ii) (in the event that payment has been made in advance) reimburse the price in accordance with clause 5.2 or (in the event payment has not been made) reduce the price of the Product by the price of that volume of the Product which is subject to this clause.

6.5 Iso tank clause: Should the product be rejected by the receiver as off-spec, then the Seller of the product, shall be liable for all associated costs from any said rejection, including re-patriating any tank containers on this flow back into the ISO carrier's network.

**7. Timing and Quantities**

If the Seller fails to deliver the Product at the time specified, or breaches any representation or warranty set out herein, the Buyer shall be entitled, without prejudice to any other rights or remedies available to it, to cancel the relevant Order or reject any Product delivered after the agreed time. The Seller shall be liable for any damages or additional costs incurred by the Buyer as a result of such failure.

Without limiting the foregoing, the Seller shall promptly notify the Buyer of any anticipated or actual failure to comply with its obligations. The Buyer's acceptance of any late delivery shall not constitute a waiver of any rights arising from such delay.

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For each Order, the Seller shall deliver 100% of the quantities of Product ordered, in full compliance with the agreed specifications.

**8. Cancellation/ Failure to comply**

8.1. The Buyer may, at any time and without cause, cancel all or any part of an Order, or any unfulfilled portion thereof, upon not less than five (5) calendar days' prior written notice to the Seller, without incurring liability.

If the Seller is in breach of any provision of the applicable Order or these Terms, or becomes insolvent, bankrupt, ceases to carry on business, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they fall due, or becomes subject to any insolvency proceedings (including the appointment of a trustee or receiver over any substantial part of its assets), the Buyer may, without notice and without liability, immediately cancel all or any part of the relevant Order.

The Buyer shall also be entitled to cancel all or any part of an Order, at any time prior to shipment, if the Seller's ability to deliver the Product in accordance with the Order is, in the Buyer's reasonable opinion, adversely affected by causes beyond the Seller's reasonable control that may impede or delay the receiving, handling, inspection, processing, marketing, shipping, or distribution of the Product or any related product.

8.2. Upon any such cancellation, the Buyer shall have the option, but not the obligation, to take possession of any Product, work in progress, or materials related to the Order, whether finished or unfinished, at the price and on the terms set out in the Order or on such other terms as may be agreed between the parties.

The Seller shall promptly reimburse the Buyer for any prepaid amounts made in respect of the cancelled Order, to the extent such amounts relate to Product not delivered prior to the effective date of termination.

If the Seller, without the fault of The Buyer, fails to meet the agreed delivery date, quantity, specifications, or quality requirements for any Order, and does not remedy such failure within ten (10) days, the Seller shall reimburse the Buyer for all direct and reasonably incurred costs arising from such failure, including, without limitation, the cost of procuring substitute goods to meet the Buyer's requirements.

**9. Risk**

Unless otherwise provided in the Contract risk passes in accordance with the provisions of Incoterms 2020 (as amended from time to time).

**10. Title**

Unless otherwise provided in the Contract title and property in the Product, including full legal and beneficial ownership, shall pass to the Buyer on delivery of the Product to the Buyer or upon payment of the purchase price being made by the Buyer to the Seller, whichever occurs earlier.

**11. Claims/Liability**

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The Seller acknowledges that nothing in this Contract shall exclude or limit any liability of the Seller for loss of profit or anticipated profit, loss of business or use or commercial opportunity, any depletion of goodwill or market reputation or any pure economic loss or any indirect or consequential loss, or any claims for consequential compensation whatsoever (howsoever caused) whether or not foreseeable which arise out of and/or in connection with a breach of the Contract by the Seller.

**12. Force Majeure**

10.1 Neither Seller nor Buyer shall be liable for damages or otherwise for any failure or delay in performance of any obligation including any obligation to make payment, where such failure or delay is caused by force majeure. Force majeure for these purposes being any event, occurrence or circumstance whatsoever which is beyond the reasonable control of that party including without prejudice to the generality of the foregoing: failure or delay caused by or resulting from an act of God, war (declared or undeclared) or the threat or apprehension thereof, act of terrorism, riot, civil disturbance, fire, explosion, embargoes, government regulation/ restriction (however for the avoidance of doubt this does not include an increase in import or export duties or taxes), delay of carrier due to breakdown or adverse weather, peril of the sea, breakdown of machinery and plant, or severe adverse weather conditions.

10.2 If either party is prevented in the performance of any of its obligations under the Contract by a force majeure event that party will forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure. The party claiming the benefit of the force majeure provision will continue to perform the balance of its obligations insofar as it is reasonably able to do so and will use all reasonable endeavours to mitigate the effects of the force majeure event on the performance of its obligations.

10.3 If under the Contract terms the Product is to be delivered by way of a single delivery and the performance of the Contract is hindered or delayed for 40 days or more due to a force majeure event the Buyer may give written notice to the Seller to cancel the Contract in which case neither party will have any liability to the other except for those rights and liabilities which accrued prior to such cancellation. Unless and until such written notice is given the Contract will continue in full force and effect.

10.4 If under the Contract terms Product is to be delivered by two or more instalments and one of the instalments under the Contract hindered or delayed for 40 days or more due to a force majeure event the Buyer may give written notice to the Seller to cancel the instalment which is affected by force majeure in which case neither party will have any liability to the other for that instalment and all remaining instalments will continue to be made pursuant to the terms of the Contract.

**13. Assignment**

The Seller shall not be entitled to assign, transfer, charge, sub-contract or deal in any other manner with all or any of its obligations under the Contract or any part of it without the prior written consent of the Buyer.

**14. Termination**

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Without limiting any other rights that may be available to the Buyer in the event that the Seller:

- (a) suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or the Seller shall commence negotiations with all or any class of its creditors with a view to rescheduling any of its debts or enters into any composition or arrangements with its creditors or if any distress or execution is levied upon any goods or property of the Seller or if the Seller commits any act of bankruptcy or if being an incorporated company an application is made to court or an order is made for the appointment of an administrator or if a notice of intention to appoint an administrator is given or an administrator is appointed over the Seller or a floating charge holder becomes entitled to appoint or has appointed an administrative receiver or if a party becomes entitled to appoint a receiver or a receiver is appointed of the whole or any parts of the Seller's undertaking or assets or a petition is filed, a notice is given a resolution is passed or an order is made for or in connection with the winding up of the Seller or if not being an incorporated company shall have a receiving order made against it or the Seller suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business or if any event occurs or proceedings are taken with respect to the Seller in any jurisdiction that have an effect equivalent or similar to any of the events mentioned in this clause; or
- (b) fails to pay or perform, when due, any obligation to the Buyer (including, without limitation, failure to make any payment or repayment as required under this Contract or to provide any margin or other security it is obligated to provide) whether under this Contract or otherwise, or
- (c) fails to provide adequate assurance of its ability to perform all of its outstanding obligations to the Buyer under this Contract or otherwise within 48 hours (but at least one business day) of demand therefore when the Buyer has reasonable grounds for insecurity; or
- (d) is in material or persistent breach of the Contract;

then in any such event (each, a "Default") the Buyer shall have the right, exercisable in its sole discretion and at any time, to terminate and liquidate this and any or all other contracts then outstanding between the parties by declaring any or all such contracts terminated. Upon such termination the Buyer shall calculate its losses and costs (or gains) at such time in Pounds Sterling which the Buyer incurs as a result of the termination and liquidation of such transaction(s) including without limitation, the costs of servicing and supplying any on-going sales contract entered into by the Buyer in respect of all or any part of the Product subject to any terminated contract and (at the election of the Buyer) costs which have been incurred as a result of its maintaining, terminating and/or re-establishing any hedge or related trading positions (as determined by the Buyer in a commercially reasonable manner). After netting such losses and costs (or gains) to a single liquidated settlement payment amount in the event that the amount represents a loss to the Buyer such sum will be due and payable upon demand therefore by the Seller to the Buyer. Both parties acknowledge that an amount calculated in this manner would represent a genuine pre-estimate of the losses which would be incurred in such circumstances.

The Buyer's rights under this clause are in addition to, and without prejudice to any other rights which the Buyer may have (whether by agreement, operation of law, in equity or otherwise) on termination. If a Default occurs, the Buyer may (at its election) from time to time set off any

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or all amounts which the Seller owes to it (whether under this Contract or otherwise and whether or not then due) against any or all amounts which it owes to the Seller (whether under this Contract or otherwise and whether or not then due), provided that any amount not then due which is included in such setoff shall be discounted to present value as at the time of setoff to take account of the period between the date of setoff and the date on which such amount would have otherwise been due).

After a Default, the Seller shall be responsible for all costs and expenses incurred by the Buyer as a result of that Default (including, without limitation, reasonable legal fees and disbursements).

**15. Dispute Resolution**

15.1 It is the intention of the parties to settle amicably by negotiation all disagreements and differences of opinion on matters relating to the Contract. Accordingly, it is agreed that the procedure set out in this clause 15.1 shall be followed in relation to any matter of dispute between the parties relating to the Contract.

(i) If any disagreement or difference of opinion arises out of this contract, then either party may refer the matter to be disposed of as follows:

(a) Head of Finance or Head of Logistics at the Buyer and the equivalent position at the Seller shall meet to attempt resolution. Should they not be able to resolve such issue within 21 days of the date on which the matter is referred to them; then

(b) A Director of the Buyer and the equivalent position at the Seller shall meet to attempt resolution. Should they not be able to resolve such issue within 21 days of the date on which the matter is referred to them then the dispute resolution process set out in this clause 13 shall be deemed to have been exhausted in respect of the matter in dispute, and each party shall be free to pursue the rights granted to it by these terms and conditions in respect of such matter without further reference to the dispute resolution process.

(ii) For the avoidance of doubt, this clause 15 shall not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or other term of the Contract.

**16. Governing Law and Jurisdiction**

16.1 The construction, validity and performance of the Contract shall be governed in all respects by English law.

16.2 Subject to clause 15 and 17.3 the parties to the Contract irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in respect of any and all disputes arising out of or in connection with the Contract.

16.3 The Buyer shall not be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court.

**17. Miscellaneous**

17.1 If any provision of the Contract is declared to be wholly or partly invalid, void, voidable, illegal, unenforceable or unreasonable the remainder of the Contract (and of such provision)

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shall not be affected except to the extent necessary to delete such invalidity, voidness, voidability, illegality, unenforceability, or unreasonableness.

17.2 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

17.3 Any waiver by the Buyer of any breach of, or any default under, any provision of the contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.4 Each of the parties to the Contract shall be responsible for obtaining all consents, authorisations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Contract.

17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.

17.6 Any notice (including any claim) or other communications given to a party under this Contract or in connection with the Contract shall be in writing, in English and in the case of the Buyer addressed to the Seller at Studio 2, 58 Waldo Road, London NW10 6AX and if addressed to the Seller at its registered office (if it is a company) or otherwise its principal place of business or in the case of either party such other address as that party may have specified to the other party in writing in accordance with this clause. Any such notice shall be delivered personally, by courier, by fax or by e-mail. A notice sent by fax or email shall be sent to such fax number or e-mail address as the receiving party shall have specified for the receipt of notices (and in the absence of any such number or address having been so specified to such number or address as has been used in connection with the order which is subject to this Contract). A notice shall be deemed to have been received if delivered personally or by courier when left at the address to which it is to be addressed, or if sent by fax or email at 9.00am on the Business Day after transmission or sending provided that no error report has been received. Business Day for the purposes of this clause shall be Monday to Friday excluding bank and public holidays in England.

17.7 Each party (the "Receiving Party") undertakes to the other that it shall not at any time disclose to any person any confidential information disclosed to it by that other (the "Disclosing Party") concerning the business or affairs of the Disclosing Party, including but not limited to information relating to the Disclosing Party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (Confidential Information), save that the Receiving Party may disclose Confidential Information to its employees, officers, agents, consultants or sub-contractors (Representatives) who need to know such information for the purposes of carrying out the party's obligations, provided that the Receiving Party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this clause. The Receiving Party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this clause. The Disclosing Party reserves all rights in the Confidential Information and no rights in respect of the Confidential Information other than those expressly stated in this Contract are granted to the Receiving Party or to be implied from this Contract. Without prejudice to the foregoing the Receiving Party shall use the Confidential Information for no

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purpose other than the purposes for which it was disclosed by the Disclosing Party to the Receiving Party in accordance with the Contract.

17.8 The Contract constitutes the whole agreement and understanding of the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.

- a. The United Nations Convention on Contracts for the International Sale of Goods of Vienna April 1980, shall not apply to the Contract.

**18. Indemnity**

The Seller shall indemnify, defend and hold harmless the Buyer and its affiliates, and their respective directors, officers, employees and agents (the “Indemnified Persons”), from and against any and all claims, demands, actions, causes of action, judgments, losses, costs, expenses, liabilities, fines, penalties, interest, payments and damages (including, without limitation, reasonable legal fees) (collectively, “Claims”), arising out of or in connection with, whether directly or indirectly, the Product supplied under these Terms.

Without limiting the generality of the foregoing, this indemnity shall include any Claims arising from or relating to:

- (i) the Product, including without limitation any non-conformity with agreed specifications and/or any recall;
- (ii) any breach of the representations and warranties set out herein;
- (iii) any damage to the property of the Indemnified Persons.
- (iv) any business interruption suffered by the Indemnified Persons; and
- (v) any claim by a third-party seeking recovery from, or contribution by, any of the Indemnified Persons in respect of any loss or damage.

End of Terms and Conditions

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