

HALCO PRODUCTS CORPORATION USA - TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following expressions will have the following meanings unless inconsistent with the context:

"Buyer" the person(s), firm or company whose order for the Products or Services is accepted by the Seller
"Business Day" any day other than a Saturday or Sunday or a public or bank holiday in the State of Illinois, U.S.A.
"Confidential Information" all information in respect of the business of the Seller including, but not limited to, know-how or other matters connected with the Products and Services and information concerning the Seller's relationships with actual or potential customers or suppliers
"Contract" the contract between the Seller and the Buyer for the sale and purchase of the Products and Services formed in accordance with **Condition 2** which incorporates the Terms and Conditions
"Force Majeure" any cause preventing the Seller or any member of the Seller Group from performing any or all of its or their obligations from time to time which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of any member of the Seller Group including, without limitation, strikes, lockouts or any other industrial disputes protest, act of God, act of nature, war, or national emergency, an act of terrorism, riot, civil commotion, malicious damage, sabotage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic, default of suppliers or subcontractors, disruptions or shortages in the supply of fuel, utilities, power, telecommunications and raw materials, and the inability of any member of the Seller Group to obtain fuel, power, raw materials from its usual sources at prices it deems reasonable
"Intellectual Property Rights" all intellectual and industrial property rights of the Seller including, without limitation, patents, know-how, registered trade marks, registered and unregistered designs, utility models, and any other rights in any invention, discovery or process, in each case in all countries in the world and together with all renewals and extensions

"Products" any products which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract
"Sales Document" Any quotation, sales confirmation, acknowledgement of order, specification or other document which incorporates or is supplemental to these terms and conditions agreed between authorized persons on behalf of the Seller and the Buyer which may set out additional terms relating to the supply of Products or Services

"Halko Products Div. of Hale and Halco Corp." an Illinois corporation with offices located at 100 N. Gordon St., Elk Grove, Illinois 60007 U.S.A., and the expression the **"Seller Group"** shall mean the Seller and the affiliated group of companies of which it is a member from time to time

"Services" any services which the Seller performs under a Contract
"Specification" the technical specifications for the Products being the chemical and physical specifications published by Seller, as amended from time to time

"Terms and Conditions" the standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Buyer and the Seller as may be specified in the Sales Contract on the front of the acknowledgement of order or on any invoice.

1.2 The headings in these Terms and Conditions are for convenience only and shall not affect their construction or interpretation.
2. FORMATION AND ORDERS
2.1 Unless otherwise specifically agreed between the parties in writing as a specific condition to apply to an individual Contract concluded between the Seller and the Buyer (or otherwise agreed as part of a separate long term arrangement concluded between the Seller and the Buyer), the following conditions alone which shall have effect as specifically amended by formal and mutual agreement by both parties) constitute the entire agreement between the parties in respect of the supply of the Products or Services concerned.

2.2 Each purchase order or other request for the supply of Products or Services issued by the Buyer to the Seller shall be an offer for the Seller to sell the relevant goods on these terms (save as amended above) which offer the Seller shall have 10 days to agree or refuse failing which the offer will be deemed to have lapsed. To the extent that the Seller shall take any step towards fulfilling the Buyer's requirements in the absence of any binding contract on these terms (as amended above), the Buyer and Seller shall be deemed to be contracting on the basis of these terms and conditions to the exclusion of any conflicting terms of the Buyer, which conflicting terms the Buyer, by its acceptance of all or any part of the goods requested or ordered, is deemed to have expressly waived.

2.3 Any quotation shall, unless otherwise stated, be valid for 30 days from the date thereof provided that the Seller shall not have previously withdrawn it. Any acceptance of a quotation issued by the Seller shall establish a contract on these terms and conditions (save to the extent amended pursuant to **Condition 2.1**).

2.4 Except as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by an authorized representative of the Seller. Save as may be provided in **Condition 10**, the Buyer may not cancel the Contract.

2.5 All samples, drawings, descriptive matter and advertising issued by the Seller (or the manufacturer of the Products) are issued or published for the sole purpose of giving an approximate idea of the Products or Services represented by or described in them. They do not form part of the Contract, provided, however, that **Conditions 11** and **12** shall apply to such items.

2.6 The Seller, on notice to the Buyer, may suspend or cancel any delivery without liability to the Buyer if such supply would, or the Seller reasonably believes that the manufacture, supply or use of the Products may, place the Seller or the Buyer in breach of any law, regulation or binding code of practice.

3. PRICE AND PAYMENT
3.1 The price of the Products and Services will be the price set out in the Seller's Sales Document and/or any acknowledgement of order and unless otherwise agreed in writing is exclusive of any costs of carriage (including demurrage) and insurance of the Products; any value added tax or other applicable sales tax or duty or charge that may be chargeable; any export or import charges, taxes or levies; and any packaging in accordance with **Condition 6**, each of which will be added to the sum in question as appropriate.

3.2 The Seller may invoice the Buyer for the Products and Services on or at any time after dispatch of the Products to or the performance of the Services for the Buyer and, subject to any other payment terms set out in the Sales Document, payment is due in United States Dollars (or in such other currency and place as the Seller shall from time to time specify in writing) 30 days after service of such invoice; provided, that all sums payable to the Seller under the Contract will become due immediately upon termination of the Contract.

3.3 The Seller may, on written notice to the Buyer, amend any agreed payment terms (including but not limited to requiring the Buyer to pay in advance or on delivery) if it considers, in its reasonable discretion, that the Buyer's credit status has deteriorated.

3.4 The time for payment will be of the essence. No payment will be deemed to have been received until the Seller has received cleared funds.

3.5 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding on any account whatsoever, unless the Buyer is required to do so by law, in which case the Buyer shall provide appropriate certificates of deduction at the time of payment.

3.6 If the Seller may, at any time, make any payment made by the Buyer to the Seller to such of the invoices for the Products and Services as the Seller thinks fit, despite any purported appropriation by the Buyer.

3.7 If any sum payable under the Contract is not paid when due then, without prejudice to the Seller's other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at Twenty-four percent (24%) per annum over the Prime Rate as published from time to time in the print edition of the Wall Street Journal (but in no event higher than the highest rate chargeable under applicable law), and the Seller will be entitled to suspend deliveries of the Products and performance of Services until the outstanding amount has been received by the Seller from the Buyer.

4. INSTALLMENTS
4.1 The Seller may deliver the Products by separate installments. Each separate installment will be invoiced and paid for in accordance with the provisions of the Contract.

5. DELIVERY
5.1 Unless otherwise agreed in writing, delivery of the Products will be made Ex-Works (as defined in INCOTERMS 2000) from the Seller's Premises. Cost of Freight, and Handling, to be added, plus 15% mark-up based on Sell.
5.2 Delivery will be as provided in the Sales Document in the absence of which delivery will be made at the Seller's premises during the Seller's usual business hours.

5.3 If the Seller agrees to effect physical delivery, of the Products, the Seller will use reasonable endeavors to deliver each of the Products to the Buyer where and when, as agreed in writing, but the time of delivery, will not be of the essence. If, despite those endeavors, Seller fails to fulfill any delivery or performance on the specified date, such failure shall not be a breach of this Contract. A delay in delivery will not entitle the Buyer to cancel any order or Contract.

5.4 The Buyer will provide at its expense at the delivery point adequate and appropriate equipment and manual labor for loading the Products at the relevant premises.

5.5.1 If the Buyer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licenses or authorizations required to enable the relevant Products to be delivered on time (except solely on account of the Seller's breach of the Contract), the Products will be deemed to have been delivered on the due date and (without prejudice to its other rights) the Seller may store or arrange for storage of those Products until actual delivery can be made, failing which, at the discretion of the Seller, a sale thereof may be effected (as provided below) and the Seller may charge the Buyer for all related costs and expenses (including, without limitation, storage and insurance).

5.5.2 Seller may, following written notice to the Buyer, after having been unable to deliver the Products, sell the same or any part thereof, and the Buyer shall bear the costs of sale, and make up any shortfall on the agreed purchase price, on demand.

5.6 If Products are to be shipped internationally by the Seller, the Buyer shall be responsible for obtaining, at its own cost, such export and import licenses and other consents in relation to the Products as are required from time to time and, if required by the Seller, the Buyer shall make those with any instructions and consents available to the Supplier prior to the relevant shipment on the Product and/or issued from time to time by the Seller (including but not limited to any Material Safety Data Sheet (MSDS) that may be provided) and in accordance with any requirements set out in any law, statute, rule, regulation, code of practice or good industry practice. The Buyer shall comply with all applicable laws, statutes, rules, regulations, codes of practice and good industry practice in respect of the Buyer's handling and use of the Products.

5.7 The Seller warrants and undertakes to the Seller that no Product or packaging or containers for the Products shall be used, resold or combined with other materials other than for a purpose for which that the Product or packaging was made available or intended or, subject as specifically provided above, in any manner which is intended or is reasonably likely to be toxic, lethal or otherwise damaging to human beings or the environment.

6. PACKAGING, USES, SAFE HANDLING
6.1 Unless otherwise stated, returnable packaging or containers are the property of and must be promptly returned to the Seller in good condition, and in any event within 90 days of delivery of the Products. The Seller reserves the right to charge the Buyer for any damage to the packaging or containers and any sums paid to replace packaging beyond reasonable repair. If the Buyer fails to return the packaging or containers in good condition and/or within the timeframe for return, the Seller may retain any deposit paid by the Buyer, or if no deposit has been paid, the Seller may invoice the Buyer for a reasonable amount on account of the lost or damaged packaging.

6.2 Packaging or containers for the Products, whether disposable, returnable, or otherwise, are intended only for the delivery and temporary storage of the Product delivered in them. Any other use of such containers may be hazardous or unlawful. THE SELLER EXCLUDES AND DISCLAIMS ALL LIABILITY IN RESPECT OF ANY OTHER USE MADE BY THE BUYER OF SUCH PACKAGING OR CONTAINERS, AND THE BUYER ACCEPTS THAT ANY SUCH ACTIONS ARE UNDERTAKEN BY IT ENTIRELY AT ITS OWN RISK.
6.3 The Buyer shall maintain and procure compliance by its employees and agents with all appropriate safe handling and storage procedures in accordance with any instructions and consents available to the Supplier prior to the relevant shipment on the Product and/or issued from time to time by the Seller (including but not limited to any Material Safety Data Sheet (MSDS) that may be provided) and in accordance with any requirements set out in any law, statute, rule, regulation, code of practice or good industry practice. The Buyer shall comply with all applicable laws, statutes, rules, regulations, codes of practice and good industry practice in respect of the Buyer's handling and use of the Products.

6.4 The Seller warrants and undertakes to the Seller that no Product or packaging or containers for the Products shall be used, resold or combined with other materials other than for a purpose for which that the Product or packaging was made available or intended or, subject as specifically provided above, in any manner which is intended or is reasonably likely to be toxic, lethal or otherwise damaging to human beings or the environment.

7. RISK / OWNERSHIP
7.1 The risk of damage to or loss of the Products will pass to the Buyer on shipment, as defined in **Condition 5.1** or deemed delivery in accordance with **Condition 5.5**.

7.2 Except as defined in **Condition 7.4**, ownership of the Products will not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to the Seller in respect of the Products together with all other sums which are or which become due to the Seller from the Buyer on any account.

7.3 Until ownership of the Products has passed to the Buyer, the Buyer must hold the Products on a fiduciary basis, as the Seller's bailee; store the Products (at no cost to the Seller and in accordance with any instructions for the storage of such Products detailed on the Product and/or issued from time to time by the Seller and in accordance with any applicable requirement in any applicable statute, regulation, code of practice or good industry practice) separately from all other Products of the Buyer or any third party in such a way that they remain identifiable as the Seller's property; ensure that the Products shall, subject to **Condition 7.4**, not be mixed with other goods or altered in any way; not destroy, deface, or obscure any identifying mark, packaging or safety instructions on or relating to the Products; and maintain the Products in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller, and will whenever requested by the Seller produce a copy of the policy of insurance.

7.4 The Buyer may resell or use the Products before ownership has passed to it solely on the following conditions: (i) any sale will be effected in the ordinary course of the Buyer's business at full market value and the Buyer will account to the Seller accordingly; (ii) any such sale will be in the Seller's property on the Buyer's own behalf and the Buyer will deal as principal when making such a sale; and (iii) any use of the Product by the Buyer shall solely be in the production of other products carried out in the ordinary course of the Buyer's business.

7.5 The Buyer's right to possession of the Products will terminate immediately if any of the circumstances set out in **Condition 10.1** occur.

7.6 The Seller will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from the Seller. The Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.7 Where the Seller is unable to determine whether any Products are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

7.8 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this **Condition 7** will remain in effect.

8. WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY

Warranty
8.1 The Seller's sole warranty to the Buyer is the Seller's limited warranty that the Products, at the time delivered to the Buyer by the Seller, comply with the Specification.

8.2 The Seller will, free of charge, within a period of 6 months from the date of delivery of Products, replace such Products which are proved to the reasonable satisfaction of the Seller, to not comply with the Specification. This obligation will not apply where (i) the Products have been improperly altered in any way whatsoever, or have been subject to misuse; or (ii) the Products have been improperly used or combined with other products; or (iii) any obligations as to the use, handling and/or storage of the Products referred to in **Condition 6.3** have not been complied with; or (iv) the Buyer has failed to notify the Seller of any defect or suspected defect within 10 Business Days of the delivery where the defect should be apparent on reasonable inspection, or on the earlier of 10 Business Days of the same coming to the knowledge of the Buyer or when such defect or suspected defect ought to have been within the knowledge of the Buyer.

8.3 Any Products which have been replaced will belong to the Seller. Any replacement Products will be liable to replacement under the terms specified in **Condition 8.1** for the unexpired portion of the 6-month period from the original date of delivery of the replaced Products.

Exclusion of Liability
8.4 In the event of any breach of the Seller's express obligations under **Condition 8.1**, the remedies of the Buyer will be limited to direct losses incurred as a direct result of the breach of **Condition 8.1**, and shall be subject at all times to the provisions of **Condition 8.2** below. The Seller will not be liable for any consequential or indirect losses or damages arising from such breach as far as reasonably practicable.

8.5 The Seller does not exclude its liability (if any) to the Buyer for any matter for which it would be illegal under applicable Illinois or United States federal law for the Seller to exclude or to attempt to exclude such liability.

8.6 Except as expressly provided in **Conditions 8.2, 8.4** and **8.5**, the Seller will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, strict liability, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
8.6.1 any of the Products, or the manufacture or sale or supply, or failure or delay in supply, of the Products by the Seller or on the part of the Seller's employees, agents, or sub-contractor.

8.6.2 any breach by the Seller of any of the express or implied terms of the contract.

8.6.3 any use made or resale by the Buyer of any of the Products, or of any product incorporating any of the Products.

8.6.4 any breach by the Buyer of the obligations set out in **Conditions 6.2 to 6.4**.

8.6.5 the unloading, discharge, storage, handling, and disposal of any Product and/or

8.6.6 any statement made or not made, or advice given or not given, by or on behalf of the Seller.

8.6.7 any event, but Buyer to **Condition 8.4**, the maximum liability of the Seller under any Contract (inclusive of all professional and related costs incurred in the preparation and pursuit of any claim) shall not exceed the lesser of five times the purchase price for the Products the subject of the relevant Order or US\$1 million per event or series of events giving rise to a claim under the relevant Contract.

8.7. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE IN CONDITION 8.1 (AND WITHOUT LIMITING THE GENERALITY OF CONDITION 8.2 WITH RESPECT TO PACKAGING AND CONTAINERS), THE SELLER MAKES NO WARRANTIES WITH RESPECT TO THE PRODUCTS OR SERVICES, OR WITH RESPECT TO THE ANY PACKAGING OR CONTAINERS, EITHER EXPRESS OR IMPLIED, AND SELLER DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, THE SELLER MAKES NO WARRANTY WHATSOEVER AS TO PRODUCTS (OR

CONDITION 8.2 below) and shall not be liable for any consequential or indirect losses or damages arising from such breach as far as reasonably practicable. THE SELLER MAKES NO WARRANTY AS TO THE DESIGN OR FUNCTIONALITY OF ANY PRODUCTS MANUFACTURED IN ACCORDANCE WITH SPECIFICATIONS PROVIDED TO THE SELLER BY THE BUYER. THE WARRANTIES SET FORTH HEREIN SHALL NOT BE ENLARGED OR OTHERWISE AFFECTED BY, AND NO OBLIGATION OR LIABILITY OF SELLER SHALL ARISE OR GROW OUT OF, SELLER'S RENDERING OF TECHNICAL ADVICE OR SERVICE TO BUYER.

8.8 Each of the Seller's employees, agents and sub-contractors may rely upon and enforce the exclusions and restrictions of liability set forth in this **Condition 8.7** to the extent that they are acting in their own best interests and for their personal benefit, as if the words "its employees, agents and sub-contractors" followed the word Seller wherever it appears in those clauses.

8.9 THE BUYER ACKNOWLEDGES THAT THE ABOVE PROVISIONS OF THIS **CONDITION 8** ARE REASONABLE AND REFLECTED IN THE PRICE, WHICH WOULD BE HIGHER WITHOUT THOSE PROVISIONS, AND THE BUYER WILL ACCEPT SUCH RISK AND/OR INSURE ACCORDINGLY. THE BUYER THEREFORE ACKNOWLEDGES THAT THIS **CONDITION 8** SETS FORTH THE BUYER'S EXCLUSIVE REMEDIES FOR ANY BREACH OF THIS CONTRACT, AND THAT ANY OTHER CLAIM BY THE BUYER AGAINST THE SELLER WITH RESPECT TO OR ARISING OUT OF THE CONTRACT OR ANY OF THE PRODUCTS OR SERVICES TO WHICH THE CONTRACT RELATES.

8.10 The Buyer agrees to indemnify, keep indemnified and hold harmless the Seller from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Seller incurs or suffers as a consequence of breach by the Buyer of **Condition 6.4** or the Buyer's combination of the Product with another product infringing or allegedly infringing any Intellectual Property Rights of any third party.

9. FORCE MAJEURE
9.1 The Seller will be deemed not to be in breach of the Contract or otherwise liable to the Buyer in any manner whatsoever, for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations under the Contract.

9.1.1 It will give written notice to the Buyer, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavors to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, mitigate its severity, without being obliged to incur any expenditure;

9.1.2 Subject to the provisions of **Condition 9.2**, the date for performance of such obligation will be deemed suspended only for a period equal to the duration of the Force Majeure.

9.1.3 In no event shall the Seller be required to purchase Products or components from other sources to fulfill the Seller's supply obligations under this Contract; and

9.1.4 The Seller may, without liability to Buyer of any kind, keep its available supply of any Product for its own uses, or distribute it among its customers or those of the Seller Group upon such basis as the Seller in its sole discretion deems fit.

9.2 The Force Majeure in question continues for more than six (6) months, either party may give written notice to the other to terminate the Contract without penalty. The notice to terminate must specify the termination date, which must not be less than 20 Business Days after the date on which the notice is given, and on such notice being given, the Contract will terminate on that termination date.

10. TERMINATION
10.1 The Seller shall give notice in writing served on the Buyer terminate the Contract immediately if the Buyer (i) is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Buyer fails to remedy such breach within 7 days of service of a written notice from the Seller, specifying the breach and requiring it to be remedied (failure to pay any sums due in accordance with **Condition 3** being a material breach of the terms of the Contract which is not capable of remedy); or (ii) becomes bankrupt, insolvent, makes any composition with his creditors or has a receiver appointed; or (iii) has any restraint, execution or other process levied or enforced on any of its property; or (iv) ceases to trade or appears in the reasonable opinion of the Seller likely or is threatening to cease to trade; or (v) has a change in control of the Buyer or any holding company of the Buyer; or (vi) the equivalent of any of the above occurs to the Buyer under the jurisdiction to which the Buyer is subject; or (vii) the Seller reasonably anticipates that one of the above set of circumstances is about to occur. The Seller will be entitled to suspend any deliveries otherwise due to occur following service of a notice specifying a breach under this condition until either the breach is remedied, or the Contract terminates, whichever occurs first.

10.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties, and liabilities of either the Buyer or the Seller accrued prior to termination. The provisions of the Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

11. INTELLECTUAL PROPERTY
11.1 No right or license is granted to the Buyer in respect of the Intellectual Property Rights of the Seller, except the right to use or to sell the Products in the ordinary course of the Buyer's business. The Seller warrants that the Seller will not be liable for any consequential or indirect losses or damages arising from such breach as far as reasonably practicable. The Seller makes no warranty that the Seller incurs or suffers as a consequence of the use of the Products or other goods or materials applied to the Products to be obliterated, obscured or omitted, nor add any additional marks or words.

11.2 If the Products are to be produced or supplied by the Seller based in whole or in part on drawings, designs, instructions or other information provided by the Buyer, the Buyer warrants that the use of such drawings, designs, instructions or other information by the Seller in producing and supplying the Products will not infringe the rights of any third party and, without limiting the generality of **Condition 8.10**, the Seller will indemnify the Seller against any costs claims expenses damages and other liabilities arising as a result of such designs drawings or other information infringing or allegedly infringing the rights of any third party.

11.3 Without limiting the generality of **Condition 8.7**, the Seller makes no warranty that any use of the Product or combination of the Product with any other product by the Buyer in any manner, whether suggested by the Seller or not, will not infringe the Intellectual Property Rights of any third party.

12. CONFIDENTIALITY
12.1 The Buyer will keep confidential all Confidential Information that it may acquire, and the Buyer will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Buyer will ensure that its officers and employees comply with the provisions of this **Condition 12**.

12.2 The obligations on the Buyer set out in **Condition 12.1** will not apply to any information which (i) is publicly available or becomes publicly available through no act or omission of the Buyer; or (ii) the Buyer is required to disclose by order of a court of competent jurisdiction.

13. GENERAL
13.1 Time for performance of all obligations of the Buyer under the Contract is of the essence.

13.2 Time for performance of all obligations of the Seller under the Contract is not of the essence and may not be made so by notice purporting to vary the Contract.

13.3 Each right or remedy of the Seller under any Contract is without prejudice to any other right or remedy of the Seller under this or any other Contract.

13.4 If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will

be ineffective without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.

13.5 No failure or delay by the Seller to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

13.6 The Seller may assign, delegate, license, hold on trust or sub-contract all or any part of its rights or obligations under the Contract.

13.7 The Contract is personal to the Buyer who may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Seller's prior written consent.

13.8 Save as set out in **Condition 8.8**, the parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it.

13.9 The Contract contains all the terms which the Seller and the Buyer have agreed in relation to the supply of Products, performance of Services or any related advice given in connection with the Products or Services and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Products and Services. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this **Condition 13.9** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

13.10 Any notice or demand in connection with this Agreement will be in writing and may be delivered by hand, internationally recognized overnight courier service, or next day guaranteed delivery post addressed to the Sales Director at the address set out in these conditions in the case of the Seller and, in the case of the Buyer, the office with which the Seller transacts the business the subject of the Contract or as otherwise notified by one party to the other party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served (i) if delivered by hand or by internationally recognized overnight courier service, at the time of delivery or (ii) if delivered by post, 3 days after being posted by next day guaranteed delivery provided the same shall have been posted by guaranteed delivery service with scheduled arrival within this time period and proof of the same is taken at the time of posting.

14. **DISPUTES; JURISDICTION**

14.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by the laws of the State of Illinois, U.S.A., without giving effect to any choice of laws rule that would cause the application of the laws of any other jurisdiction. Without limiting the generality of the foregoing, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to or be used in the determination of the rights of the parties under the Contract.

14.2 The state courts of and the federal courts sitting in the State of Illinois, U.S.A. shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement. Each party hereby irrevocably agree to submit to the jurisdiction of such courts and waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not personally subject to the jurisdiction of such court, that the action, claim, suit or proceeding is brought in an inconvenient forum or that the venue of the action, claim, suit or proceeding is improper.