



- 37, Lorong Sungai Puloh 7 /KU6, Jalan Sungai Puloh, Kawasan Perindustrian Sungai Puloh, 42100 Klang, Selangor
- sales@echochemgroup.com
- Mon to Fri: 9:am to 6pm

ECHO CHEM Standard Terms and Conditions of Sale

“Standard Terms and Conditions”

1. Scope

- 1.1 These Sales and Delivery Terms apply to any sale and delivery of Products made by the Seller, unless otherwise explicitly agreed in writing between the Parties.
- 1.2 In the event of any discrepancy between these Sales and Delivery Terms and the Buyer's general terms and conditions, these Sales and Delivery Terms shall prevail, unless otherwise explicitly agreed in writing between the Parties.
- 1.3 Where the Seller and the Buyer enter into a framework agreement for the sale and purchase of Products, these Sales and Delivery Terms shall apply to any quotation, order and/or Confirmation under such framework agreement, except where specifically excluded in the framework agreement. In the event of any discrepancy between such framework agreement and these Sales and Delivery Terms, the terms and conditions of the framework agreement shall prevail.

2. Formation of Contract

- 2.1 No quotations from the Seller shall be considered legally binding. All quotations are subject to the Products being unsold, meaning that the Seller does not warrant that the Products covered by a quotation will be available for delivery upon the Buyer's ordering.
- 2.2 All orders placed by the Buyer must be in writing and shall at the minimum specify the type of Products and Quantity as well as the place of delivery. Unless otherwise specified in the order, the Buyer's order shall remain binding upon the Buyer for a period of thirty (30) days from the Seller's receipt of the order.
- 2.3 When the Buyer has placed an order with the Seller, no modifications can be made to the Buyer's order without the Seller's prior written approval.
- 2.4 The Buyer's orders are not binding upon the Seller, unless and until the Seller has confirmed the order by a Confirmation
- 2.5 A binding agreement for the sale and delivery of Products shall be deemed to exist between the Parties when the Seller has confirmed an order by a Confirmation. Such agreement comprises these Sales and Delivery Terms, the individual order (to the extent confirmed by the Confirmation) and the

individual Confirmation (collectively the “Contract”). In the event that the Parties have entered into a framework agreement, this shall, subject to Clause 1.3, apply as part of each such separate Contract, but shall not, unless otherwise set out therein, cause more orders and Confirmations to constitute one and the same Contract.

3. Customer Recovery Charge

- 3.1 Except to the extent otherwise stated in the Contract, the Seller is free to choose the specific consignment/batch of Products, and without specific regard to the place of origin, to be delivered to the Buyer in connection with its performance of the delivery obligations under the individual Contract.
- 3.2 The quality of the Products is exclusively determined by the Seller based on the specifications in the Contract.

4. Delivery Terms

- 4.1 Delivery Terms
 - 4.1.1 Delivery shall be in accordance with the INCOTERMS clauses published by the International Chamber of Commerce. The relevant version being the one which is effective on the date the Contract is concluded between the parties.
 - 4.1.2 For any delivery where the bill of lading or other relevant title documents are handed over to the Buyer or its representatives prior to the delivery date stated in the Contract, delivery of the Products is for all legal purposes, including the passing of risk, deemed to have taken place upon the handover of such document(s), irrespective of the INCOTERMS clauses applicable to the Contract in question. However, the shipment and the physical delivery of the Products will take place in accordance with the Contract, irrespective of the handover of such document(s).
 - 4.1.3 The delivery date(s) are indicated in the Confirmation. The stipulated delivery date(s) are approximate and for guidance only, and the time of delivery shall not be of the essence. A delay in delivery, other than as a result of gross negligence or willful misconduct on the part of the Seller, does not entitle the Buyer to any remedies.
 - 4.1.4 If no specific delivery date has been indicated in the Confirmation, the Seller, acting reasonably, is entitled to stipulate a delivery date by written notice, taking into consideration the Quantity



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and the nature of the Products to be delivered.

- 4.1.5 The Buyer shall in the order inform the Seller of any specific requirements to be considered as part of the delivery of the Products.
- 4.1.6 The Seller reserves the right to make partial shipment, partial delivery and/or transshipment. Each partial shipment or delivery shall be regarded as fulfilment of a separate and independent Contract.
- 4.1.7 In the event that the Buyer is in default of acceptance, the Seller is entitled to claim compensation for any expenditure arising as a result therefrom (e.g. costs of return transport, demurrage, storage, redelivery or disposal).
- 4.1.8 The Seller shall not accept delay in delivery/collection dates, which shall be an event of termination under clause 16.1(iv) and for each day of delay by Buyer in accepting any delivery (whether partial/full), Seller is entitled to charge additional cost.
- 4.1.9 The Seller shall be entitled to make partial deliveries and may be invoiced by the Seller immediately.
- 4.1.10 For deliveries in bulk, the Buyer accepts a tolerance of plus minus (+/-) 2.5% for quantities and for other deliveries a tolerance of plus minus (+/-) 0.5% ("Tolerances"). Save for manifest error, documents for quantities shall amongst others include the weight certificates, bills of lading, sea-way bills, liner-way bills and freight receipts, and shall be decisive. The Buyer shall accept deliveries which are within the Tolerances and shall not be entitled to object to or reject the Products by reason of the surplus or shortfall and will pay the invoiced price for the quantity of Goods delivered.
- 4.1.11 The Seller and the Buyer shall respectively be responsible for compliance with Applicable Laws and or all laws and regulations regarding import, export, transport, storage and/or use of the Products.
- 4.1.12 In the event the Buyer requests the Seller to arrange for shipment to deliver the Products, the Seller shall at its sole discretion arrange shipping space and make shipment or other forms of delivery of the Products to the Buyer, at the Buyer's risk and account.
- 4.1.13 It is agreed, if delivery of the Products is via tank trucks, rail tankers, pipelines or drums of the Products, the Seller shall not be made liable for contamination or other detriment to the Products whatsoever due to lack of cleanliness or other defaults or unsuitability of the containers for transportation. In the event the containers are provided by the Buyer, the Seller is entitled but not obliged to clean the containers at the Buyer's

costs and any liability on the part of the Seller for damage to the container or the contents is excluded.

- 4.2 Inspection and Acceptance of the Products
- 4.2.1 Upon the receipt of the Products, the Buyer shall immediately inspect the same, in particular as to condition and quantity, even if samples have been previously sent, by analysis or otherwise, exercising such care as customary or appropriate in the circumstances.
- 4.2.2 The Buyer is deemed to have accepted the Products, unless written notice of rejection, specifying the reasons for the rejection, is given to the Seller **within ten (10) working days** after delivery of the Products. The Buyer cannot raise any claim in respect of any visible damage or defect which is or could have been detected during such inspection and which has not been notified to the Seller before the aforementioned deadline.
- 4.2.3 The Buyer is deemed to have waived any claim for defects should there be a breach of the obligations as stated in Clause 4.2.1 and Clause 4.2.2 and/or failure to submit its claim to the Seller in writing.
- 4.2.4 If the Products are defective and the Buyer has notified the Seller within the period prescribed in Clause 4.2.2 aforementioned, the Seller shall have the right to choose whether to remedy the defect within a reasonable deadline by undertaking repair or supply the Buyer with non-defective replacement products unless otherwise required under Applicable Law and/or Jurisdiction.
- 4.2.5 Buyer's claim for defective products shall be limited to **three (3) months from the receipt by the Buyer of the Products**, unless longer periods are mandatory required by Applicable Law and Jurisdiction.
- 4.3 Delay Due to Buyer's Circumstances
- 4.3.1 If the Buyer fails to take timely delivery of the Products - or if, where the Buyer is to give delivery instructions, the Buyer fails to give such instructions - the Seller may at its discretion, and as further described in this Clause 4.3 herein, either extend the time of delivery or shipment of the Products, and store the Products at the Buyer's risk and cost until actual delivery, or terminate the Contract or any part thereof, in either case without prejudice to any other right or remedy available to the Seller.
- 4.3.2 In events as stated in Clause 4.3.1 above, the



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Seller shall be entitled to issue the relevant invoice and claim payment in accordance therewith as if delivery had taken place on the applicable delivery date. Such stipulated date of delivery shall be considered the date of delivery for the purpose of the agreed delivery terms, in particular with respect to the passing of risk.

- 4.3.3 In events as stated in Clause 4.3.1, the Seller is entitled to request that the Buyer accepts delivery of the Products within a specified period of time. If the Buyer does not accept delivery of the Products within this period of time, the Seller is entitled to terminate the Contract and any parts thereof and to sell the Products to a third party. The Buyer shall indemnify the Seller for any costs and losses incurred by the Seller related thereto, including costs incurred under Clause 4.3.3 herein.

5. Retention of Title and Risk

5.1 Title and Risk

- 5.1.1 Title to the Products (ownership) shall remain with the Seller until the Buyer has paid the purchase prices= in full, in accordance with Clause 7.2 on **Payment**. Any Products where payment has yet to be received in full shall be treated as retained products ("Retained Products") by the Seller where title to such remains with the Seller.
- 5.1.2 If the Buyer carries out any treatment, processing, combination or mixing of the Retained Products with products from another source to make a new item or mixed item respectively, the Seller is entitled to co-ownership in proportion to the invoice value of the Retained Products at the time of delivery.

5.2 Claims for Damage in Transit

- 5.2.1 Notice of claims arising out of damage in transit must be lodged by the Buyer directly with their appointed insurance agent **within three (3) working days** after the delivery of the Products.

6. Labelling and Packaging

- 6.1 Unless otherwise stated in the Contract, the Seller's or the sub-supplier's standard packaging will be used, and the costs associated therewith are included in the Purchase Price.
- 6.2 Where the Seller shall (i) pack the Products with the attachment of labels or by using graphics, trademarks, etc. provided by the Buyer or (ii) pack the Products in packaging provided by the Buyer or acquired by the Seller as per the instruction of the Buyer, such obligation shall have been specifically agreed to by the Seller in the Contract. Clause 4.3 shall apply where the Buyer is in delay with its

deliveries for this purpose.

- 6.3 In cases comprised by Clause 6.2 above, and in addition to any other conditions set by the Seller, the Buyer shall be responsible for and warrants to the Seller that, where relevant, the label(s), graphic(s), trademark(s), etc. and packaging, separately and when used with the Products, comply with applicable law, are safe for use and do not violate any third-party rights, including intellectual property rights. The Buyer undertakes to indemnify and hold the Seller harmless from and against any and all claims and losses (including any damages, fees, fines and costs,) in respect thereof.

7. Purchase Price, Payment and Interest

7.1 Purchase Price

- 7.1.1 The price quoted in the Seller's quotation with regard to the Products is based on the market price at the time. However, the Purchase Price for the Products is the price set out in the Contract and may deviate from the quoted price. The Purchase Price shall be paid strictly in accordance with the payment terms set out in Clause 7.2.
- 7.1.2 The Purchase Price covers only the Quantity of the Products and accessories, if any, which are specified in the Contract.
- 7.1.3 At any time before delivery has been completed, and to the extent that such costs are payable by the Seller, the Seller shall be entitled to adjust the Purchase Price in consequence of an increase in costs beyond the Seller's control, such as, but not limited to, increases in duties and taxes related to the delivery in question.

7.2 Payment Terms

- 7.3.1 Payment shall be made on the date stated in the Confirmation or, if not stated in the Confirmation, on the date stated in the Seller's invoice "Due Date".
- 7.3.2 The Seller is always entitled to request, as a condition for shipment and delivery, that the Buyer provides satisfactory security for the payment of the Purchase Price to the Seller or that the Purchase Price is prepaid in whole or in part.
- 7.3.3 All amounts are stated in the currency specified in the Contract and do not include Value Added Tax (VAT) or other taxes or duties
- 7.3.4 If the Buyer makes the payment via bank transfer to the Seller, the payment shall not be considered effective until the amount is made available on the Seller's bank account.

7.3 Late Payments and calculation of Interest



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- 7.3.1 Failure to pay by the Due Date constitutes a fundamental breach of contractual obligations and the Seller shall be entitled to charge interest from the Due Date until the date of actual payment at a rate of one percent (1%) per month. Such interest shall be payable without any further notice from the Seller to the Buyer.
- 7.3.2 If the Products are to be delivered successively, the Seller is entitled to withhold a delivery if the Buyer has defaulted on payment for one or more previous deliveries.
- 7.3.3 If the Seller becomes aware of the facts, which indicates a serious deterioration in the Buyer's financial circumstances, the Seller shall be entitled to withdraw from the contract in whole or part without any further notice. This shall not in any event prejudice the Seller's rights to file any claims against the Buyer.
- 7.3.4 Any dispute between the Buyer and the Seller about the quality or any other claims submitted by the Buyer shall not give the Buyer the right to suspend or deduct any payment in the invoices.

7.4 Set-off, Counter-claim or Right of Retention

- 7.4.1 The Buyer is not entitled to set off any claim the Buyer may have against the Seller against any amount payable to the Seller under the Contract, unless the Seller has accepted such claim in writing.

7.5 Insurance

- 7.5.1 Subject to the applicable INCOTERMS rule, see Clause 4.1.1, the Buyer shall take out insurance coverage to cover all Products in transit as well as all unpaid Products already delivered to the Buyer.

8. Commencement of Services

The Buyer is not entitled to return any Products, unless otherwise agreed in writing by the Seller.

9. Warranties

Unless expressly provided under this Standard Terms and Conditions and/or the Contract, as the case may be, the Seller gives no warranty, express or implied, as to the merchantability of the Products, fitness of the Products for any particular purpose even if such purpose is known to the Seller. The Buyer shall undertake its own assessment, investigations, inspections and tests.

10 Storage of Products

The Buyer is obliged to store the Products under conditions that, from a health perspective, are suitable for the type of Products in question.

11. Limitation of Liability

- 11.1 Unless otherwise stated in the Contract, the Seller shall not be liable to the Buyer for any indirect, special, punitive or incidental damages, including, but not limited to, loss of profit, loss of revenue, production or operating losses, lost sales or contracts, loss of opportunity, loss of goodwill, or losses relating to marketing activity arising out of or relating to the Contract.
- 11.2 For the avoidance of doubt, the Seller shall only be liable for damages caused by the wilful or gross negligent conduct of the Seller, its representatives, employees or other vicarious agents and shall be limited to those typically arising directly from the Contract.
- 11.3 The limitations set out in Clause 11.1 shall not apply to the Buyer. The Buyer is liable to the Seller in the event of breach of this Contract for such damages and losses as set out in Clause 11.1 in addition to any other liability under the Contract and applicable law.
- 11.4 The Buyer's exclusive remedy and the Sellers' limit of liability shall be restricted to the damages which shall in no event exceed the price of the Products which is stated in the invoice. No claim or dispute whatsoever shall release the Buyer from its obligation to pay to the Seller for the Products.
- 11.5 The above shall also apply for the benefit of employees of the Seller in the event of a direct claim asserted by the Buyer against them.
- 11.6 Without prejudice to other Clauses in the Contract stipulating a shorter liability period, the Seller's liability under the Contract will cease six (6) months from the time of the delivery.
- 11.7 The limitations of liability under the Contract shall not apply where the Seller has been found guilty of fraud or other wilful acts or gross negligence, or if such limitation is found to be invalid under applicable law.

12. Warranties

Unless expressly provided under this Standard Terms and Conditions and/or the Contract, as the case may be, the Seller gives no warranty, express or implied, as to the merchantability of the Products, fitness of the Products for any particular purpose even if such purpose is known to the Seller. The Buyer shall undertake its own assessment, investigations, inspections and tests.

13. Liability for Damage caused by the Products (Product Liability)

- 13.1 In the event of liability for damage caused by the



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Products (product liability), the limitations of liability following from the Contract shall apply to the extent permissible under applicable law.

- 13.2 The Seller can only be held liable for personal injury caused by the Products if it can be proved that the injury was caused by failure or negligence committed by the Seller or others for whom the Seller is liable.
- 13.3 The Seller shall not be liable for any damage to property or movables caused by the Products after delivery has taken place. Nor shall the Seller be liable for any damage to products manufactured or held by the Buyer or to products of which the Products form a part.
- 13.4 Should any third-party claim damages in accordance with this Clause 13 against one of the Parties, said Party is obliged to immediately notify the other Party thereof in writing. Both Parties are obliged to participate in any action brought before a court or an arbitration tribunal by a third-party examining claim for damages lodged against one of the Parties on the basis of damage allegedly caused by the Products.
- 13.5 The Buyer shall indemnify and hold the Seller harmless from and against all claims made by any third party concerning product liability, to the extent that such liability has been disclaimed by the Seller under the Contract.

14. Force Majeure

- 14.1 The Seller or the Buyer shall not be liable for any default in performance of the Contract and/or this Standard Terms and Conditions due to any incident or circumstance beyond the Seller's or the Buyer's control including without limitations any flood, drought, ice, frost, wind, typhoon, hurricane, tidal wave, landslide, lightning, earthquake or any other act of God, prohibition of exportation, refusal to issue export licence, law, regulation, order, direction or guidance of any government or instrumentality thereof, intervention of civil naval or military authorities, war or hostilities or the threat or apprehension thereof, warlike condition, riot, civil commotion, insurrection, mobilization, revolution, blockade, embargo, strike, lockout, slowdown, sabotage, fire, explosion, plague or other epidemic, quarantine, prolonged failure or shortage of electric current, shortage of petroleum products, fuel or energy sources or other raw materials, accidents to or breakdown of machinery or plant, unavailability or shortage of shipping space or transportation facilities, port facilities or loading or unloading facilities, perils of the seas, accident of navigation

action or any other event of any nature whatsoever beyond control and affecting the activities of the Seller or the Buyer (hereinafter called "Force Majeure").

- 14.2 On the occurrence of any event of Force Majeure, the Seller shall have the option (i) to extend the time of delivery of the Products or performance of its other obligations; or (ii) to terminate the Contract and/or this Standard Terms and Conditions in case the occurrence lasts more than three (3) months; or (iii) to hold a discussion with the Buyer to resolve the matter amicably and in the event of the Seller exercising such option, the Buyer shall accept such extension of time or termination or discussion as the case may be, without any claim against the Seller.
- 14.3 On the occurrence of any event of Force Majeure, the party who is affected by the Force Majeure may give notice to the unaffected party without delay in respect of the occurrence of the Force Majeure event.

15. Confidentiality

- 15.1 A Party shall not, apart from what is required by applicable law or by any court or other authority of competent jurisdiction, make use of, except for the purposes contemplated by the Contract, disclose to any third party or publish any Confidential Information received from or in respect of the other Party under or in connection with the Contract.
- 15.2 The Parties shall ensure that their employees also observe this Clause 15.
- 15.3 The restrictions contained in this Clause 15 shall apply at all times during the term of the Contract and for a period of three (3) years after the expiry or termination thereof. However, if more Contracts are entered into between the Parties, the post-term confidentiality obligation shall not expire before three (3) years after the expiry or termination of the most recent Contract.

16. Termination

- 16.1 Without limiting the Seller's remedies at law, the Seller may, by a fourteen (14) days written notice to the Buyer forthwith terminate the Contract, this Standard Terms and Conditions and/or any other contract with the Buyer, delay or suspend shipment or delivery, stop the Products in transit, if any of the following events occurs:-
- (i) If the Buyer fails to perform any material provision of the Contract and/or this Standard Terms and Conditions within fourteen (14) days after receipt of a written notice; or



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- (ii) If the Buyer shall become unable to pay its debts generally as they become due or shall hold a meeting of its creditors, or shall make a general assignment for the benefit of creditors, or shall file a petition in bankruptcy or if any proceeding against the Buyer of the type referred to herein seeking any such relief shall not have been dismissed within thirty (30) days after the commencement thereof; or
- (iii) If a trustee, receiver or liquidator shall be appointed with the consent or acquiescence of the Buyer; or
- (iv) In the event the Buyer fails and/or delays in taking delivery of the Products from the Seller within the specified time in the Contract, then the Seller shall be entitled to terminate the Contract, without any liability, and further, without prejudice to rights of the Seller to claim for any antecedent breach arising from the breach of the Contract and/or this Standard Terms and Conditions by the Buyer under this clause. The Buyer shall be responsible for all the costs (including but not limited to the differential cost of the price of the raw materials and other components of the Products which are ordered by the Buyer and the market price of the raw materials and the other components of the Products) incurred by the Seller as a result of the termination under this clause.

17. Licences and Approvals

The Buyer shall be obligated at its own expense to procure any licences required for the import, sales, marketing and distribution of the Products into the country of destination and ensure that all approvals and consents of the relevant authorities are obtained and comply with all the laws, rules and regulations of the country of destination in respect of the import, sales, marketing and distribution of the Products.

18. Intellectual Property Rights

- 18.1 The Buyer shall indemnify and hold the Seller harmless from any and all claims of third parties arising from infringement of patent, trade mark, brand, utility model, design, pattern, copyright or other industrial property rights, whether within or outside the Seller's country resulting from the Products and/or the use thereof and not from the Products as such and its specifications.
- 18.2 Nothing herein contained shall be construed as transferring any patent, trade mark, utility model, brand, design, pattern, copyright or other industrial

property rights in the Products, all such rights being expressly reserved to the Seller as the true and lawful owner thereof. The Buyer acquires no right, title or interest whatsoever in the patent, trade mark, brand, utility model, design, pattern, copyright or other industrial property rights associated therewith or to the Products.

19. Governing Law and Jurisdiction

The Contract and/or this Standard Terms and Conditions shall be governed by the laws of Malaysia and excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods. Any dispute arising out of or in connection with the Contract and/or this Standard Terms and Conditions shall be subject to the exclusive jurisdiction of the courts of Malaysia.

20. Notice

Any notice request or other communication required herein to be given by either of the parties hereto to the other shall be in writing and shall be sent to such other party at its address provided by the parties or such address as the party may have notified in writing to the other party for this purpose, by hand, registered post, express courier, service email or facsimile.

21. Amendments

No amendment and addition to this Standard Terms and Conditions or to the Contract shall be valid unless a notice under clause 20 above, is duly served on the Buyer by the Seller prior to the Buyer placing the order with the Seller.

22. Non-waiver

No provision of this Standard Terms and Conditions or of the Contract shall be deemed waived by any party unless such waiver shall be in writing and signed by the party against whom enforcement of any such waiver is sought.

23. Severability

If any provision or part-provision of this Standard Terms and Condition is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this



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clause shall not affect the validity and enforceability of the rest of this Standard Terms and Conditions.

24. No Assignment

The Buyer shall not transfer or assign the Contract and/or this Standard Terms and Conditions or any part hereof without the Seller's prior written consent. Notwithstanding herein otherwise contained, the Seller has the right to assign all or part of its rights and obligations under the Contract and/or this Standard Terms and Conditions to any of its subsidiaries; holding company; associates; or affiliates within the Seller's group of companies without the prior approval of the Buyer.

25. Changes In the Products

The Seller reserves the right to make additions or modifications to the specifications of the Products which are required to conform to the statutory requirements of the Applicable Law and/or which do not materially affect the quality or performance of the Products.

26. Inadequacy of Damages

Damages may not be adequate remedy for breach by the Buyer. The Seller shall be entitled to remedies of injunction, specific performance or other equitable relief for any threatened or actual breach.

27. Buyer's indemnity

The Buyer shall at all times indemnify and keep indemnified, compensate and hold the Seller and its respective officers, directors, agents, employees or contractors and subcontractors harmless against any and all losses, costs, liabilities, claims, demands, penalties, causes of action and damages of any nature whatsoever which the Seller may suffer or incur directly or indirectly arising from any breach of the Applicable Laws by the Buyer and for any personal injury, death or property damage to third parties arising out of or in connection with the performance of the Buyer's obligations under this Standard Terms and Conditions.

28. Anti-corruption and Bribery laws

The Buyer acknowledges that the Seller may be subject to the relevant anti-bribery anti-corruption laws. Under such anti-corruption laws, it is unlawful to pay or to offer to pay anything of value to government officials, government employees, political candidates, or political parties, or to persons or entities who will offer or give such payments to any

of the foregoing, in order to obtain or retain business or to secure an improper commercial advantage. The Buyer shall comply fully at all time with all applicable anti-corruption laws, of [Malaysia, China, Singapore, Indonesia] in which it conducts business with the Seller. The Buyer further acknowledges that it is familiar with the provisions of the applicable anti-bribery and anti-corruption laws and shall not take or permit any action that will either constitute a violation under, or cause the Seller to be in violation of, the provisions of such laws.