

TERMS & CONDITIONS RELATING TO SALE OF GOODS AND PROVISION OF SERVICE

1 DEFINITIONS

In these conditions:

a) **“Act of Insolvency”** means the passing of a resolution or the presentation of a petition for winding up or for the making of an administration order, the appointment of a receiver and/or manager or an administrator or administrative receiver over the whole or any part of an undertaking and its assets, the making of any composition with or the calling of any meeting with creditors and/or the levying of execution on any assets or the presentation of a petition in respect of bankruptcy order or an application for an interim order in connection with any proposals for a voluntary arrangement.

“Brexit” means the United Kingdom ceasing to be a member state of the European Union.

“Brexit Trigger Event” any of the following events caused by or otherwise related to Brexit:

- a change in law or a new requirement to comply with an existing law or an existing law ceases to apply to either us or the Customer;
- the imposition of or a change to a duty, tax or levy imposed on imports or exports of the Goods and/or Services or any raw materials or components used by us to manufacture the Goods or any products into which the Goods and/or Services are to be incorporated or in conjunction with which the Goods and/or Services are to be exploited; and/or
- the loss of or change or the imposition of a new requirement for any licence or content required by either of us and/or the Customer to provide the Goods and/or Services.

“Company”, “we”, “us” and “our” and related expressions mean Hylomar Limited (registered company number: 04119677) and (where the context admits or requires) the employees, agents and subcontractors of Hylomar Limited.

“Contract” means the contract for the provision by us to or for you of the Goods and / or Services.

“Customer”, “you” and “your” and related expressions mean the person with whom we contract for the provision of the Goods and/or Services.

“FCA” shall mean Free Carrier as more specifically defined by (Incoterms 2010) and in all circumstances, unless otherwise agreed, shall be either FCA Laredo, Texas, USA in relation to NAFTA or FCA Wigan WN2 1JT, UK in relation to ROW.

“Goods” means the product(s) (if any) described on or by reference to our delivery note(s) and invoice(s) and/or to be supplied by us in accordance with these conditions and shall include all or any of them and any part thereof.

“Intellectual Property” means any patent, utility model, author’s certificate, registered or unregistered trade mark, copyright, registered or unregistered design or similar rights.

“NAFTA” means Canada, Mexico and the USA **“ROW”** means the rest of the world excluding NAFTA Words in the singular incorporate the plural and vice-versa and any reference to a person includes a reference to a company, partnership or other business entity as well as to a natural person.

“Site” means any location (other than our premises) specified on or by reference to our delivery note(s) or invoice(s) where Services are to be provided or to which Goods are to be delivered.

“Services” means the services (if any) described on or by reference to our delivery note(s) and / or invoice(s) and/or to be provided by us and the giving of advice in connection with the Goods.

Clause headings are for convenience only and shall not affect the meaning or interpretation of these conditions

2 FORMATION OF CONTRACT

a) Any quotation written or oral, submitted by us shall be an invitation to treat and not an offer. The placing of any order, written or oral, whether or not any quotation has been submitted by us, shall constitute an offer by you. You are responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by you. Any offer by you and any subsequent acceptance by us shall be on the basis that these conditions shall be incorporated in the Contract to the exclusion of any terms or conditions brought forward by or on your behalf. Any offer by you is not accepted unless and until confirmed by us or our authorised representative, either in writing or by the commencement of performance

b) No variation or addition to these conditions, whether written or oral, shall have effect unless reduced to writing and signed by one of our directors.

c) You acknowledge that there are no representations (express or implied) outside these conditions which have induced you to enter into the Contract.

d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice, or other document or information issued by us shall be subject to subsequent correction without any liability on our part.

3 THE GOODS

a) All descriptive information given by us relating to the Goods (including without limitation specifications, videos technical data sheets and particulars of performance) is, whilst given in good faith, for guidance only and does not constitute a binding representation as to the method of use or function of Goods. We reserve the right to alter the specification of Goods at any time without reference to you, including but not limited to comply with any statutory requirements. Stated weights or volumes of Goods are nominal only.

b) It shall be your responsibility to ensure that the Goods are suitable for your intended purpose and comply with all laws in force in the jurisdiction in which you will receive or use the Goods or which are otherwise applicable to the manufacture, labelling, packaging, sale, supply or delivery of the Goods. You must notify us of any laws affecting the manufacture, labelling, packaging, sale, supply or delivery of the Goods before or at the time that you place your order. We shall have no liability in respect of any defect arising from any drawing, design, specification, formula or manufacturing instructions supplied by you for our use. The Goods shall be conclusively deemed to have been accepted by you 7 days following delivery or, if earlier, on use by you.

c) If there is a defect in Goods due to either faulty materials or faulty manufacture and you discontinue using the

Goods and bring it to our attention promptly upon discovery, then we shall repair or replace the Goods or reimburse the purchase price of the Goods provided that:

- i) you allow us to inspect the Goods (which shall if required by us be returned by you at your expense to our premises for inspection); and
 - ii) the defect is not due in whole or in part to the normal ageing of the Goods or to the mixing of the Goods with any substance without our consent or to the use of the Goods in a manner not specifically approved by us.
- d) If the Contract requires us to send the Goods to your Site or to provide the Services on your Site you will provide us in good time with all the information and instruction we shall reasonably need regarding the Site and the condition under which the Goods are to be sent or the Services provided. Any quotation given for transport of the Goods or provision of the Services will be valid only if all such relevant information has been received by us. Delivery of the Goods shall be FCA.

4 SERVICES

a) We shall use reasonable commercial endeavours (without litigation) to meet any performance dates for the provision of the Services, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

b) We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services (including as a result of Brexit), and we shall notify you in any such event.

c) We warrant to you that the Services will be provided using reasonable care and skill.

5 LIMITATION OF LIABILITY

a) Nothing in these conditions shall limit or exclude our liability for:

- i) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors;
- ii) fraud or fraudulent misrepresentation;
- iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- iv) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- v) defective products under the Consumer Protection Act 1987.

b) Subject to clause 5 (a) we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of business or business opportunity, loss of contracts, loss of or damage to goodwill or reputation, loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract (including any losses that may result from a deliberate breach of the Contract by us, our employees, agents or subcontractors);

c) Our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by us, our employees, agents or subcontractors shall not exceed a sum equivalent to the lower of:-

- i) fifty times the value of the Goods and / or Services; or
- ii) GBP 5 million;

d) All conditions, warranties, representations, statements, liabilities and any other terms whatsoever implied by common law, statute or otherwise are hereby excluded to the extent allowed by law and we shall have no obligation to you whether in tort or in contract or otherwise except as expressly stated in these conditions.

e) This clause 5 shall survive termination of the Contract howsoever arising.

6 DELIVERY AND RISK

a) Unless otherwise agreed in writing, delivery of the Goods shall be FCA, our price excludes all costs of transport and the methods of transport shall be those which we in our sole discretion consider appropriate. Unloading facilities including any special equipment shall be provided by you at your expense.

b) Any time or date quoted by us for delivery of all or any of the Goods is an estimate only and time shall not be of the essence. We shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event. We may deliver the Goods in advance of any quoted delivery date if we give you reasonable notice. Subject to availability we reserve the right to part-deliver and/or deliver in parts your order without affecting your liability to pay for any Goods delivered.

c) If you fail to take delivery of the Goods at the time stated for delivery, or if you fail to provide sufficient information or appropriate facilities to enable us to effect delivery of the Goods then you shall (and if you fail to, we may) forthwith arrange for the Goods to be stored at your own risk and expense, failing which may sell the Goods to a third party and recover from you any loss sustained as a result.

d) Any short delivery or damage to Goods in transit must be notified to both us and the carrier within 24 hours of delivery.

e) If we do fail to deliver the Goods in circumstances amounting to breach of contract by us then our liability for such non-delivery shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of equivalent goods, to replace Goods not delivered, over the price of the Goods.

f) The risk of loss of or damage to Goods shall pass to you upon delivery FCA, or where you fail to accept delivery on the first date of storage whether arranged by you or by us.

7 PRICE AND PAYMENT

a) The price for the provision of the Goods or the Services shall be as set out in the Contract.

b) We reserve the right to increase the charges for the Goods and/ or Services at any time prior to delivery as a result of factors beyond our reasonable control including but not limited to due to the impact of a, a Brexit Trigger Event or otherwise connected with Brexit.

c) Unless otherwise agreed payment shall be made in full in advance or if credit approved on or before the 30th day of the month following the invoice date. Interest at the yearly rate of 4% over the base rate of our bank, plus reasonable 3rd party collection costs will be charged on all monies outstanding after this time until the actual date of payment. If cash discounts are offered in quotations or elsewhere, these will not be applicable unless payment of outstanding balances fall within terms.

d) All payments under the Contract are exclusive of any value added tax, any other applicable taxes, tariffs, duties and levies (including but not limited to as a result of Brexit) and both sender’s and receiver’s bank charges which may be payable, and for which you will be liable in addition.

8 TITLE

a) Notwithstanding delivery and the passing of risk, the legal and beneficial ownership in all goods shall not pass to you and shall remain with us and we retain the right of disposal until full payment has been received by us from you for all Goods supplied at any time whether hereunder or in respect of any other Contract or Contracts and of all other sums due.

b) In the event that the Goods are not paid for on the due date or if we shall otherwise be entitled to determine the Contract pursuant to clause 10 hereof, we may, whether or not such right of termination shall be exercised and without prejudice to any other rights and remedies at any time recover the Goods or such part thereof as shall be in the possession or under your control and for that purpose we and our authorised representatives may enter upon any of the Customer’s land or buildings upon or in which the Goods may be situated.

c) Until the property in the Goods passes to you pursuant hereto you agree to hold the Goods as the fiduciary agent and bailee for us and shall keep the Goods separate from any other property or any other person and properly stored, protected and identified as our property and insured to their full value against all normal comprehensive risks with our interest as owner being noted on the relevant policy or policies.

d) If you shall purport to dispose of or use in manufacture any Goods before the property therein shall have passed to you then you shall be under fiduciary duty to us to hold the proceeds in trust for us in a separate account and forthwith to pay therefrom such sum as shall satisfy your total indebtedness whether under this Contract or any other Contract. If in such circumstances the proceeds of such disposal are not received by you, you hereby irrevocably appoint the Company to be your attorney to collect and receive payments of such proceeds in its name and on its behalf and to discharge therefrom the sums owing to us under this Contract and any other Contract and all costs and expenses incurred by this Company in connection with the collection of such proceeds and to pay over the balance to the Customer or as it may direct.

9 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

a) You will indemnify us against all claims, costs and expenses resulting either from any infringement of any Intellectual Property rights or from any claim in respect of any breach of confidence, passing off, unfair competition or their equivalents in any part of the world where such an infringement or claim is due to our having manufactured or adapted Goods in accordance with specifications supplied by you or to our having provided Services in accordance with the specification supplied by you

b) You will keep strictly confidential and not use or disclose to any third party any information regarding our current or future products or business activities or plans which come into your possession during the course of the Contract. This obligation of confidentiality does not apply to information which was already known to you at the time of disclosure (as evidenced by written records) or which is already in the public domain or which subsequently comes into the public domain other than via you.

10 TERMINATION

a) Without prejudice to our other rights and remedies we may by notice to you terminate the Contract with immediate effect in whole or in part:

- i) if the impact of Brexit (including any Brexit Trigger Event) has a materially adverse impact on our ability to perform the Contract; or
- ii) if any sum owing by you to us on any account whatsoever is unpaid after the due date for payment; or
- iii) if you refuse to take delivery of or to collect any of the Goods in accordance with the terms of the Contract; or
- iv) if you commit or threaten to commit any Act of Insolvency or if we reasonably apprehend that you are about to do so; or
- v) if you breach the terms of the Contract or of any other contract with us; or
- vi) if the supply by us of any Goods to you would breach any law in force from time to time in relation to the control or prohibition of any substance used in the manufacture and / or packaging of the Goods.
- vii) Without prejudice to our other rights and remedies we may, if any of the termination events set out in a) above occur, suspend the performance of our obligations under the Contract.

b) Any failure to exercise or delay in exercising any of our rights under the Contract shall not operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or future exercise thereof. Any actual waiver by us of any breach by you of an obligation under the Contract shall not affect our rights in the event of any further additional breach or breaches.

11 EVENTS FOLLOWING TERMINATION

a) If the Contract is terminated by us under clause 10 above then:

- i) the full price for all Goods delivered and not yet paid for shall be immediately due and payable, notwithstanding that the normal terms of payment as set out in clause 7b) above may not have been exceeded;
- ii) the full price agreed for any Services shall be immediately due and payable notwithstanding

that we have not provided such Services in full or at all; and

iii) at our discretion we may either sell to you or dispose of elsewhere Goods in the course of manufacture or manufactured and not yet delivered, or delivered and not yet paid for provided that if we elect to dispose of such Goods elsewhere you will be liable to pay us any loss incurred by us as a result thereof.

b) Immediately upon the termination of the Contract for whatever reason you will return to us all documents, technical data and equipment loaned by us to you for the purposes of or in connection with the Contract.

12 FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform or delay in performing any of its obligations hereunder where such delay or failure arises wholly or in part by reason of any factor beyond its direct control including without limitation the occurrence of any Brexit Trigger Event or other event or circumstance connected with Brexit, epidemic or pandemic disease (including but not limited to COVID 19) as well as any law, governmental order, rule, regulation, direction, curfew restriction, quarantine or other act of the competent authorities implemented to combat such pandemic diseases), lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service, delays or failures in a transport network including but not limited to as a result of Brexit, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order (including but not limited to any law and / or order in force from time to time relating to the control or prohibition of use of any substance used in the manufacture or packaging of any Goods), rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors, shortage of raw materials, any other event reasonably regarded as being of force majeure event in our absolute discretion acting in good faith (“Force Majeure Event”).

b) If either party seeks to rely on a Force Majeure Event it shall forthwith notify the other and shall (subject to clause c) below) as soon as reasonably possible on such a Force Majeure Event ceasing to apply, forthwith perform all outstanding obligations under the Contract.

c) If a Force Majeure Event prevents us from providing any of the Services and/or Goods for more than 16 weeks, we shall, without limiting our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to you.

13 MISCELLANEOUS

a) You may not withhold or delay payment of any amounts due to us under the Contract or exercise any right of set off in respect of any sum or sums owing or alleged to be owing by us under the Contract or under any other arrangement between us.

b) The Contract is personal to you and may not be assigned in whole or in part to any third party without our prior written consent.

c) The Contract does not constitute a partnership between you and us, nor are you our agent for any purpose. You are not entitled to pledge our credit or to make any commitment on our behalf or in our name.

d) Each obligation contained in these conditions is a separate obligation, and shall be severally enforceable as such, notwithstanding the non-enforceability of any other such obligation.

e) Any notice required to be given under the Contract shall be in writing addressed to the registered office address of the other for the time being or such other address as may be notified for that purpose and shall be deemed served on the next business day following posting if sent by first class pre-paid post or on the same day if sent by facsimile or delivered by hand (unless such day is not a business day or such notice is sent or delivered after 4.30 p.m. in either of which cases the notice shall be deemed served on the next business day)

f) The Contract (Rights of Third Parties) Act 1999 shall not apply.

g) The Contract shall be governed by and construed in accordance with English law and the parties shall submit to the non-exclusive jurisdiction of the English courts.

14 COMPLIANCE

14.1 You shall:

a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

c) comply with our anti-corruption and anti-bribery policy (annexed to these conditions), in each case as we may update them from time to time (Relevant Policies).

d) promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of the contract;

e) immediately notify us (in writing) if a foreign public official becomes an officer or employee of you or acquires a direct or indirect interest in you (and the you warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract);

14.2 Notwithstanding any other provision of these conditions (and without prejudice to clause 10), We shall have the right to terminate the contract, (without liability howsoever arising) by written notice to you in the event of a breach by you of any of the provisions of this clause 14.

14.3 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.