ROBINSON BROTHERS LIMITED - CONDITIONS OF SALE

1. Definitions

(a) In these Conditions, the following definitions apply:

"Agreement" means the agreement between the Seller and the Buyer for the sale and purchase of Products in accordance with these Conditions.

"Buyer" means the person or firm who purchase Products from the Seller.

"Conditions" means the terms and conditions set out in this document.

"Incoterms" means the Incoterms 2010, published by the International Chamber of Commerce (as amended or replaced from time to time).

"Insolvency Event" means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (2) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (4) suspension of payments to all or any creditors and/or ceasing business; (5) an encumbrance taking possession of all or any assets of a party; (6) an administrator or receiver being appointed over a party or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; or (8) the other party having reasonable grounds for believing that any of the foregoing is imminent. For the avoidance of doubt if any of the foregoing occur in relation to a partner in any of the parties hereto it shall be deemed to occur in relation to that party.

"Order" means the Buyer’s order for the Products as set out in the Buyer’s purchase order form, overleaf or in the Buyer’s written acceptance of the Seller’s quotation.

"Products" means a product or products or any mixture or combination set out in the Order and shall include any containers in which the Products are supplied.

"Seller" means Robinson Brothers Limited,

"Working Day" means the days of the week from Monday to Friday unless declared a public holiday or Bank Holiday by the UK government.

(b) In these Conditions, the following rules apply:

(i) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(ii) A reference to a party includes its personal representatives, successors or permitted assigns.

(iii) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(iv) Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(v) A reference to writing or written includes faxes.

(vi) Words in the singular shall include the plural and vice versa.

2. Basis of Agreement

(a) These Conditions apply to the Agreement to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
(b) The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

(c) The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Agreement shall come into existence.

(d) The Agreement constitutes the entire agreement between the parties. 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 Agreement.

(e) Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller’s brochures and on its website are produced for the sole purpose of giving an approximate idea of the Products described in or on them. They shall not form part of the Agreement or have any contractual force.

(f) A quotation for the Products given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue, unless otherwise agreed by the Buyer and Seller in writing.

3. Delivery

(a) The delivery dates given by the Seller are given in good faith but are estimates only and the time of delivery is not of the essence. The Seller shall not be liable for delays in delivery howsoever caused and the Buyer shall not be entitled to refuse to accept the Products by reason of any delay in delivery unless the Seller gives its written consent.

(b) If the Buyer fails to take or accept delivery of the Products within three Working Days of the Seller notifying the Buyer that the Products are ready, then, except where such failure is due to the Seller’s failure to comply with its obligations under the Agreement:

(i) delivery and acceptance of the Products shall be deemed to have been completed at 9.00 am on the third Working Day after the day on which the Seller notified the Buyer that the Products were ready; and

(ii) the Seller shall store the Products until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

(c) If 10 Working Days after the day on which the Seller notified the Buyer that the Products were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, charge the Buyer for any shortfall below the price of the Products.

(d) The Seller reserves the right to make deliveries in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Agreement. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

(e) If delivery of the Products is made from tankers or storage installations, the amount shown by the meters or dip sticks or other measuring or weighing equipment used by the Seller or carriers, shall conclusively determine the quantity of Products delivered.

4. Passing of Property and Risk

(a) Title in the Products shall not pass to the Buyer until payment in full (in cash or cleared funds) has been received by the Seller for:

(i) the Products; and

(ii) any other products or services that the Seller has supplied to the Buyer in respect of which payment has become due.

(b) Until title to the Products has passed to the Buyer, the Buyer shall:

(i) hold the Products on a fiduciary basis as the Seller’s bailee;

(ii) store the Products separately from all other products held by the Buyer so that they remain readily identifiable as the Seller’s property;
(iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

(iv) maintain the Products in good condition and keep them insured against all risks for their full price from the date of delivery;

(v) notify the Seller immediately if it becomes subject to any of the events listed in clause 10(a)(iii); and

(vi) give the Seller such information relating to the Products as the Seller may require from time to time,

but the Buyer may resell or use the Products in the ordinary course of its business.

(c) If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in clause 10(a)(iii), or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored] in order to recover them.

(d) Risk in the Products passes to the Buyer on delivery.

(e) Delivery occurs:-

(i) if the Products are collected from the seller, when the drums or other containers are loaded on to the collecting vehicle or when the Products have passed the delivery line of the Seller's storage tank;

(ii) if the Products are delivered to an address in the United Kingdom, or by agreement an address in mainland Europe, where the drums or other containers have been removed from the transporting vehicle at such address or where the Products have passed out of the flexible hose or delivery line of the tanker, or

(iii) if Incoterms are incorporated into the Agreement, in accordance with such Incoterms.

5. Buyer's Obligations

(a) The Buyer shall ensure that when delivery is made from a tanker or installation, the storage tank or other receptacles into which delivery is to be made shall be suitable and of sufficient capacity for the delivery and shall not contain anything other than the Products. The Buyer shall indemnify and hold the Seller harmless against the consequences of any failure on the part of the Buyer so to ensure.

(b) Except as provided in this clause 5, the Seller shall have no liability to the Buyer in respect of damaged Products or any shortfall in the quantity of Products delivered and unless the Seller is otherwise notified by the Buyer, the Products shall be deemed to have been accepted by the Buyer three days after delivery.

(c) If:

(i) the Buyer gives notice in writing to the Seller within five Business Days of delivery of the Products that some or all of the Products are defective or have not been delivered in the agreed quantity;

(ii) the Seller is given a reasonable opportunity of examining such Products;

(iii) the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Buyer's cost; and

(iv) all Products are preserved intact as delivered,

the Seller may, at its option, replace or refund the price of the defective Products or supply additional Products when there has been a shortfall in delivery of the quantity of Products in accordance with the Agreement.
(d) The Seller may use its reasonable endeavours to comply with instructions the Buyer gives as to the markings to be placed on the packages. However, the Seller accepts no responsibility for any failure to do so and the Buyer shall indemnify and hold the Seller harmless against all the consequences of the Seller complying with such instructions.

(e) The Buyer will obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of the Products.

6. Packing and Marking

While it is intended that the packages shall bear a description of the Products contained therein, the Buyer must ensure at the time of delivery that the packages are so marked. Unless otherwise agreed in writing with the Seller all packages and other containers are non-returnable. Packages and containers specified as returnable remain the property of the Seller and shall not be used for any other purpose than storage of the Products supplied. Packages and the containers specified as returnable must be returned to the Seller in good condition, as soon as possible, carriage paid to an address indicated by the Seller.

7. Price and Payment

(a) The price of the Products shall be the price set out in the Seller’s quotation, or, if no price is quoted, the price set out in the Seller’s published price list in force as at the date of delivery.

(b) The price of the Products is based upon costs current as at the date of the Seller’s quotation. The price charged to the Buyer under the Agreement may be changed to take account of costs current at the date of invoice.

(c) The price of the Products is exclusive of the costs and charges of packaging, insurance and transport of the Products (unless otherwise specified in writing by the Seller), which shall be invoiced to the Buyer.

(d) The price of the Products is exclusive of amounts in respect of value added tax (VAT). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Products.

(e) The Seller may require the Buyer to pay such security that the Seller requests to the Seller before delivery of the Products.

(f) Save as otherwise agreed by the parties, the Seller may invoice the Buyer for the Products at any time after delivery.

(g) The Buyer shall pay the amount shown on the invoice in full without deduction or set off and in cleared funds within 30 days from the date of the invoice (due date). Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.

(h) If the Buyer fails to make any payment due by the due date, the Seller shall at its discretion have the right to require the Buyer to pay interest on the overdue amount at the rate of 4% above Barclays Bank Plc’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount whether before or after any judgement. The Buyer shall pay the interest together with the overdue amount.

(i) The Buyer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Buyer shall not 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. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

8. Seller’s Warranty

(a) The Seller warrants that the Products delivered to the Buyer will comply with the specification or description agreed in writing between the parties. In the absence of such specification or description the Products shall be of normal industrial quality.

(b) Save as provided in this clause, no representation, warranty, condition or term, expressed or implied, statutory or otherwise as to the quality of the Products, its fitness for any purpose or compliance with any sample or description or in any other respect shall apply to the Agreement or to any delivery made thereunder.
9. Limitation of Liability

(a) Nothing in these Conditions shall limit or exclude the Seller's liability for:

(i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(ii) defective products under the Consumer Protection Act 1987;

(iii) fraud or fraudulent misrepresentation;

(iv) breach of the terms implied by section 12 of the Sale of Products Act 1979; or

(v) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

(b) Subject to clause 9(a):

(i) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

1. loss of profit;
2. loss of business;
3. depletion of goodwill and/or similar losses;
4. loss of anticipated savings;
5. loss of goods;
6. loss of contract;
7. loss of use, or
8. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses,

arising under or in connection with the Agreement; and

(ii) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Products.

(c) No representation, warranty or indemnity is implied that the Products do not infringe any letters patent, trade marks, registered designs or other industrial property rights.

10. Termination of the Agreement

(a) Without prejudice to any other rights and/or remedies available to it, if at any time during the term of the Agreement:

(i) the Buyer fails to make any payment due within 21 days of it falling due to the Seller by the due date for payment which remains unpaid;

(ii) the Buyer commits a breach of these Conditions and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or

(iii) an Insolvency Event occurs in respect of the Buyer;

the Seller may:

(iv) provided that the Products have not been resold, or irrevocably incorporated into another product, require the Buyer to deliver up the Products and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them;

(v) terminate the Agreement immediately on written notice to the Buyer; or
(vi) withhold performance of all or any of its obligations under the Agreement and/or any other contract with the Buyer, and if performance is so suspended, the Seller shall be entitled, as a condition of resuming performance, to require pre-payment, or such security as it may require.

(b) If the Seller withholds performance of all or any of its obligations pursuant to clause 10(a)(vi), it may at any subsequent time, terminate the Agreement immediately on written notice to the Buyer.

(c) If a notice of termination is given, all monies outstanding from the Buyer to the Seller shall become immediately due and payable.

11. Force Majeure

The Seller shall in no circumstance be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by any circumstance beyond its reasonable control including but not limited to Act of God or the Queen's enemies, fire, flood, ice, frost, withdrawal of labour, breakdown of machinery, loss or detention of vessels or other means of transport, inability to arrange transport by the Seller's normal methods, delay in loading or discharging Products, inability to obtain supplies of Products or raw materials, or restrictions on the use of or supply of fuel or power.

12. Seller's Marks

The Buyer shall not, in selling the Products or in promoting the sale thereof, make any reference to the Seller, or to any of the Seller's trademarks or brand names without the Seller's prior written consent.

13. Assignment and subcontracting

The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the Seller.

14. Notices

Any notice required to be given under the Agreement shall be given in writing delivered to the party for whom it is intended at the address stated in the Agreement or to such other address in the United Kingdom as that party may in writing substitute and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or fax. Any notice or other communication shall be deemed to be received: if delivered personally, when left at the address required pursuant to this clause 14; if sent by pre-paid first class post, recorded delivery or fax, at 9.00 am on the first Working Day after posting; or if delivered by commercial courier, on the date and at the time that the courier delivers the notice.

15. Health and Safety

All Products are sold on the basis that the Buyer will take notice of the care and handling recommendations supplied to it by the Seller or manufacturer of the Products, or failing such recommendations, follow the highest standards of care adopted by the trade in respect of such Products and the Buyer accepts sole responsibility for taking such care and the safe use of the Products. If the Buyer is not already in possession of literature or information in connection with the safe use of the Products at work then contact should be made with the Seller.

16. Severance

(a) If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17. Waiver

A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
18. Third Party Rights

A person who is not a party to the Agreement shall not have any rights under or in connection with it.

19. Variation

Except as set out in these Conditions, any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

20. No Partnership

The Conditions and Agreement shall not constitute and shall not be deemed to constitute a partnership between the Seller and the Buyer and the Buyer shall not act nor purport to act as agent for the Seller but solely as an independent contractor.

21. Disputes

If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it then, except as expressly provided in the Agreement, the parties shall follow the dispute resolution procedure as follows:

(a) either Party shall give to the other written notice of the dispute, setting out its nature and full particulars, together with relevant supporting documentation. On service of such dispute notice the Buyer and the Seller shall attempt in good faith to resolve the dispute;

(b) If the Buyer and Seller are for any reason unable to resolve the dispute within 14 days of service of the dispute notice, such dispute will be referred the Managing Directors of the Buyer and the Seller who shall meet to attempt in good faith to resolve the dispute.

(c) If the dispute is not resolved at the meetings pursuant to clause 21(a) and (b) the parties may attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator;

(c) The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings

22. Governing law and jurisdiction.

(a) The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.

(b) The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.