

## **GENERAL TERMS AND CONDITIONS FOR SALES AND DELIVERIES OF WUERTH MALAYSIA**

### **I. Interpretation**

1. In these Conditions:

"Buyer" means the person who accepts a quotation of Wuerth for the supply of Goods, whose order for Goods is accepted by Wuerth, or who otherwise enters into a contract for the supply of Goods with Wuerth;

"Conditions" means the general terms and conditions set out in this document and (unless the context otherwise requires) any special terms and conditions agreed in writing between the Buyer and Wuerth;

"Contract" means a contract, offer, purchase order or any agreement concluded by the parties hereto for the purchase and sale of Goods, howsoever formed or concluded, to which these Conditions apply;

"Goods" means the goods which Wuerth is to supply in accordance with a Contract;

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce in Paris, France, as in force at the date when the Contract is made;

"Wuerth" means any legal entity or branch of Wuerth Group established under Malaysia laws, including but not limited to i) Wuerth Industrial Services Sdn Bhd (879037-K) ; and ii) Wuerth (Malaysia) Sdn. Bhd. (162643-D)

"Writing" includes electrical mail, facsimile transmission and any comparable means of communication.

2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **II. Basis of the Contract**

1. The supply of Goods by Wuerth to the Buyer under any Contract shall be subject to these Conditions, which shall govern

the Contract to the exclusion of any other terms and conditions contained or referred to in any documentation submitted by the Buyer or in correspondence or elsewhere or implied by trade custom practice or course of dealing, even if this is not explicitly stated. Failure by Wuerth to object to the terms and conditions set by the Buyer shall in no event be construed as an acceptance of any of the terms and conditions of the Buyer. Neither Wuerth's commencement of performance nor Wuerth's delivery shall be deemed as acceptance of any of the Buyer's terms and conditions. If the Conditions differ from any of the terms and conditions of the Buyer, the Conditions and any subsequent communication or conduct by or on behalf of Wuerth, including, without limitation, confirmation of any order and delivery of Goods, constitute a counter-offer and replacing such terms and conditions submitted by the Buyer. Any communication or conduct of the Buyer which confirms an agreement for the delivery of Goods by Wuerth, as well as acceptance by the Buyer of any delivery of Goods from Wuerth shall constitute an unqualified acceptance by the Buyer of the Conditions.

2. If a license or consent of any third party (including without limitation any governmental or other authority) is required in connection with the Buyer's purchase or use of the Goods, the Buyer shall obtain the license or consent at its own expense. Failure to obtain any license or consent does not entitle the Buyer to withhold or delay payment of the debts owed to Wuerth. Any additional expenses or charges incurred by Wuerth resulting from such failure shall be paid or indemnified by the Buyer.

3. Buyer acknowledges that Wuerth's employees or agents are not authorized to make any representations concerning any Goods and any information made available in connection with any offer for the supply of Goods is not binding unless expressly designated as binding by Wuerth in writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim based on any such representations or information without written confirmation by Wuerth.

4. Wuerth reserves the right to amend the Conditions at any time. Wuerth will notify the Buyer of any such amendments by sending the amended Conditions to the Buyer. The amended Conditions will take effect on the date of notification of these amendments. The amended Conditions shall apply to all transactions concluded between the Buyer and Wuerth as of the day following the date of such notification.

5. Any typographical clerical or other error or omission in any sales documents, including but not limited to quotation, price list, acceptance of offer, invoice, or other document or information

issued by Wuerth shall be subject to correction without any liability on the part of Wuerth.

### III. Quotations, orders and specifications

1. Unless stated otherwise by Wuerth, quotations made by Wuerth in whatever form are not binding on Wuerth and merely constitute an invitation to the Buyer to place an order. All quotations issued by Wuerth are revocable and subject to change without notice.

2. No order submitted by the Buyer shall be deemed to be accepted by Wuerth unless and until confirmed in writing by Wuerth's authorized representatives. Wuerth shall be entitled to refuse an order without providing any reasons.

3. The Buyer shall be responsible to Wuerth for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving Wuerth any necessary information relating to the Goods, within a sufficient time to enable Wuerth to perform the Contract in accordance with its terms.

4. The quantity, quality, and description of and any specification for the Goods shall be those set out in Wuerth's quotation (if accepted by the Buyer), or the Buyer's order (if accepted by Wuerth), or as otherwise set out in any Contractual documentation.

5. If any process is to be applied to the Goods by Wuerth in accordance with a specification submitted by the Buyer, the Buyer shall indemnify Wuerth against all loss damages costs and expenses awarded against or incurred by Wuerth in connection with or paid or agreed to be paid by Wuerth, in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from Wuerth's application of the Buyer's specification. If any allegation of infringement is made by a third party, Wuerth is not obligated to enquire into the merits of the allegation but is entitled to terminate the Contract and claim compensation for all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges, and expenses incurred by Wuerth up to the time of termination.

6. Wuerth reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or regulatory requirements, or where the Goods are to be supplied to Wuerth's specification which do not materially affect their quality or performance. With regard to the specified dimensions of the delivery items, Wuerth reserves the right to deviations, normal to the prevailing market standards,

unless adherence to the dimensions have been expressly agreed upon.

7. No concluded Contract may be modified or cancelled by the Buyer except with the agreement in writing of Wuerth and on the terms that the Buyer shall indemnify Wuerth in full against all losses (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by Wuerth as a result of the modification or cancellation as the case may be.

8. Unless agreed upon in writing by Wuerth, all specifications and particulars submitted by Wuerth are approximate and only for information purposes such that the Buyer cannot rely on the accuracy of the same.

9. All intellectual property rights whether registered or not remain the absolute property of Wuerth.

### IV. Price

1. Subject to Clause IV.2 hereof, the price of the Goods shall be the price stated in Wuerth's offer which has been accepted by the Buyer, or the price stated in the Buyer's order which has been accepted by Wuerth. Prices may be amended from time to time by Wuerth according to material and labor costs fluctuation.

2. Wuerth reserves the right, by giving notice to the Buyer at any time before delivery/performance, to increase the price of the Goods in the event of:

2.1 any increase in the cost to Wuerth (such as, including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour materials, or other costs of manufacture);

2.2 any change in delivery/performance dates, quantities, or specifications for the Goods which is requested by the Buyer; or

2.3. any delay caused by any instructions of the Buyer or failure of the Buyer to give Wuerth adequate information and/or instructions.

A written notice from Wuerth, notifying the Buyer of any increase in cost and the effective date of the increase, shall be accepted by the Buyer as conclusive and binding.

3. Subject to Clause IV.4 hereof, unless otherwise agreed in writing between the Buyer and Wuerth, all prices for Goods are given by

Wuerth as EXW (ex-warehouse) according to Incoterms 2010. If the parties agree on some other mode of delivery as per Incoterms, the price for Goods shall be calculated by Wuerth accordingly.

4. If the Goods are to be delivered Overseas, the absorption of any applicable goods and services tax, value added tax, similar tax levies, or duties shall be apportioned between Wuerth and the Buyer in accordance with the respective Incoterms. If the Goods are to be delivered within Malaysia, the quoted price includes all applicable taxes and duties. Unless otherwise stated, all quotations are exclusive of bank charges and other costs and expenses, not specifically provided hereof and the Buyer shall be liable to pay for such additional charges, costs and expenses.

5. Unless otherwise agreed, Wuerth's prices include standard packaging. The Buyer shall bear the cost of any special packaging of the Goods which it may request or may be necessitated by delivery by any means other than Wuerth's normal means of delivery. The Buyer shall, unless otherwise agreed, be solely responsible for the disposal of all packaging in accordance with all regulations whether statutory or otherwise relating to protection of the environment.

6. In the event that Wuerth agrees to accept the return of any Goods despite the lack of any statutory obligation to do so, it shall be entitled to charge an administrative fee amounting to either 20 percent of the product value or RM 50, whichever is more.

7. Transportation packaging and all other forms of packaging costs will not be taken back or refunded.

## **V. Terms of payment**

1. If no other specific terms have been agreed upon in writing, between the Buyer and Wuerth, the following terms shall apply:

1.1. Wuerth shall be entitled to invoice the Buyer on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer, or the Buyer fails, refuses and/or neglected to take delivery or collection of the Goods, in which event Wuerth shall be entitled to invoice the Buyer for the price at any time after Wuerth has notified the Buyer that the Goods are ready for collection or Wuerth has tendered delivery of the Goods, as the case may be.

1.2. Unless otherwise agreed, the Buyer shall pay Wuerth within 20 days net of the invoice date. All payments shall be made without any deduction on account of any taxes and free of set-off or other counterclaims.

2. The time of payment for the price shall be of the essence to the Contract. Receipts for payment will be issued only upon request. For all means of payment, the date of payment shall be deemed to be the date on which Wuerth, or a third party with claims vis-à-vis Wuerth, has the right to dispose of the relevant payment amount.

3. Notwithstanding any provisions hereof, Wuerth is entitled in its absolute discretion, from time to time, to require full or partial payment of the price of the Goods prior to delivery. Without prejudice to the foregoing, if in Wuerth's opinion the Buyer's creditworthiness deteriorates before delivery of the Goods, Wuerth may require full or partial payment of the price prior to delivery, or the provision of a security by the Buyer in a form acceptable to Wuerth.

4. If the Buyer fails to make any payment on the due date, without prejudice to any other right or remedy available to Wuerth, Wuerth shall be entitled to:

4.1 cancel the Contract or suspend any further deliveries of the Goods; and/or

4.2 appropriate any payment made by the Buyer for such of the Goods (or the goods supplied under any other contract between the Buyer and Wuerth) as Wuerth may think fit (notwithstanding any purported appropriation by the Buyer); and/or

4.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of one (1) percent per month until payment in full is made (a part of a month being treated as a full month for the purposes of calculating interest). All costs and expenses incurred by Wuerth with respect to the collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be on the Buyer's account.

4.4. if, notwithstanding dunning and a set deadline, the order party fails to fulfil his payment obligations within the set deadline, or an application is made for opening insolvency proceedings for the assets of the order party or his statutory representative, the entire residual receivables including all incidental costs shall fall due immediately. In such cases, Wuerth may: declare rescission of all still unfulfilled contracts; reclaim already delivered but still unpaid merchandise from the reservation of title; and demand reimbursement of all costs causally related to the rescission. The cost reimbursement obligation is excepted if the order party is not responsible for the payment default.

5. Any complaint or discrepancies with respect to the invoice or statement of account shall be notified to Wuerth in writing within 14 days after the date of invoice and/or statement of account. Thereafter, the Buyer shall be deemed to have approved the invoice and/or statement of account.

6. The Buyer shall not be entitled to offset any claims, except in the event that such claims have been confirmed in a court of law or expressly recognized/accepted by Wuerth. Furthermore, the Buyer shall only be entitled to set off claims against payment obligations arising from the same the transaction and not from different transactions.

## **VI. Delivery/Performance**

1. Unless otherwise agreed, the Buyer shall collect the Goods at Wuerth's premises upon Wuerth has notified the Buyer that the Goods are ready for collection. The Goods are deemed to have delivered by Wuerth to the Buyer upon collection of Goods by the Buyer or within two (2) working days, whichever is earlier. If the parties agree on some other mode of delivery as per Incoterms, Wuerth's delivery obligations shall be determined according to the applicable Incoterms. Save for obligations according to the applicable Incoterms or obligations expressly undertaken by Wuerth in writing, Wuerth shall have no other obligations, in particular obligations which it might otherwise have according to the provisions of the Sale of Goods Act 1957.

2. Wuerth shall not be obligated to complete any order in one delivery and expressly reserves the right to deliver by installments. Where Wuerth delivers by installments, each installment shall be deemed to be sold to the Buyer under a separate contract. Failure to deliver any installment shall not entitle the Buyer to repudiate the contract.

3. For bulk goods, Wuerth reserves the right to vary the delivery amount by 10 percent in which the invoiced amount will be adjusted accordingly to the variation.

4. Wuerth has the right at any time to sub-contract all or any of its obligations for the sale of the Goods to any other party as it may from time to time decide without giving notice of the same to the Buyer.

5. Dates and times quoted for delivery are estimations only, and any delay in delivery will not entitle the Buyer to damages or to any other remedies whatsoever. The Goods may be delivered by Wuerth in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Unless previously agreed by

Wuerth in writing, the time for delivery shall not be of the essence, and Wuerth shall not be liable for any delay in delivery howsoever caused. Where time of performance has been agreed by Wuerth to be of the essence of the Contract, and Wuerth fails to comply with its obligations in due time, the Buyer shall be entitled to compensation for actual and direct loss and expense sustained as a result of Wuerth's delay in performance, which was foreseeable at the time of conclusion of the Contract and resulting from the usual course of events, subject always to the limitations set out in Condition 13.

6. If Wuerth has fails to deliver the Goods in accordance with the Contract, the Buyer shall be entitled, by serving written notice on Wuerth, to demand performance within a specified time thereafter, and if Wuerth fails to do so within the specified time, the Buyer shall be entitled to terminate the Contract in respect of the undelivered Goods and claim compensation for actual loss and expense sustained as a result of Wuerth's non-performance, which was foreseeable at the time of conclusion of the Contract, and resulting from the usual course of events, subject always to the limitations set out in Condition 13.

7. If the Buyer fails to take delivery of the Goods or fails to give Wuerth adequate delivery instructions at the time stated for delivery (other than by reason of Wuerth's fault) then, without prejudice to any other right or remedy available to Wuerth, Wuerth may:

7.1 store the Goods at the Buyer's risk until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) claim from the Buyer for the excess over the price under the Contract provided the price has been paid in cleared funds in full or charge the Buyer for any shortfall below the price under the Contract; or

7.3. terminate the Contract and claim for losses and damages from the Buyer.

## **VII. Risk and property in the Goods**

1. Unless otherwise mutually agreed, risk of damage to or loss of the Goods shall pass to the Buyer upon Wuerth notifies Buyer that goods are ready to be delivered or collected.

2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the

Goods shall not pass to the Buyer until Wuerth has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Wuerth to the Buyer for which payment is then due.

3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Wuerth's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly store, protect, insure, and identify as Wuerth's property, but shall be entitled to resell or use the Goods in the ordinary course of its business and shall account to Wuerth for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties, and in the case of tangible proceeds properly stored protected and insured.

4. The Buyer agrees with Wuerth that the Buyer shall immediately notify Wuerth of any matter from time to time affecting Wuerth's title to the Goods and the Buyer shall provide Wuerth with any information relating to the Goods as Wuerth may require from time to time.

5. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), Wuerth shall be entitled, at any time, to require the Buyer to deliver up the Goods to Wuerth and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

6. The Buyer shall not be entitled to pledge, or in any way charge, by way of security for any indebtedness any of the Goods which remain the property of Wuerth. In the event the Buyer does so, all moneys owing by the Buyer to Wuerth shall (without prejudice to any other right or remedy of Wuerth) forthwith become due and payable.

7. The Buyer hereby irrevocably appoints Wuerth and its servants as its duly authorized agents for the purpose of entering upon any premises where the Goods are stored for the purpose of examination and/or recovery of the same at any time without notice.

8. Where the Goods have been incorporated by the Buyer into any product or article in such a way that the substance and identity of the Goods have been irrevocably altered or destroyed, then property in such new product(s) or article(s) shall immediately upon its or their creation vest wholly in Wuerth, and the provisions of the preceding sub-conditions shall apply mutatis mutandis to

such products or articles as if they were Goods remaining the property of Wuerth; provided that this sub-condition shall not apply if Wuerth has received in cash or cleared funds / payments in full for the price of the Goods and all other goods agreed to be sold by Wuerth to the Buyer for which payment is then due.

9. If the provisions in this Condition 7 are not effective according to the law of the country in which the Goods are located, the legal concept closest in nature to retention of title in that country shall be deemed to apply mutatis mutandis to give effect to the underlying intent expressed in this condition, and the Buyer shall take all steps necessary to give effect to the same.

10. The Buyer shall indemnify Wuerth against all losses, damages, costs, expenses, and legal fees, incurred by the Buyer in connection with the assertion and enforcement of Wuerth's rights under this Agreement.

#### **VIII. Claim based on Defects, Restriction on Use and remedies**

1. Subject to those expressly provided in these Conditions, all other warranties conditions or terms, including those implied by statute or common law, and are excluded to the fullest extent permitted by law.

2. Subject to this Condition 8, Wuerth warrants that the Goods will correspond with their specification at the time of delivery, and agrees to remedy any non-conformity therein for a period of 6 months commencing from the date on which the Goods are delivered or deemed to be delivered or until the expiry of the Goods' shelf-life, whichever is the earlier ("Warranty Period"). Where the Buyer is dealing as a consumer, Wuerth further gives to the Buyer such implied warranties as cannot be excluded by law.

2.1. Wuerth's above warranty concerning the Goods is given subject to the following conditions:

2.1.1. No condition is made or to be implied nor is any warranty given or to be implied as to the life or wear of the Goods supplied or that they will be suitable for any particular purpose or use under any specific conditions, notwithstanding that such purpose or conditions may be known or have been made known to Wuerth. Buyer acknowledges and agrees that the Goods shall not be used in life-saving or life-supporting medical equipment, in military systems, in nuclear plants, in aerospace technology, in combustion control systems, in transportation, in traffic, in safety equipment and in equipment or systems where a failure or malfunction of the product can, upon reasonable assessment, lead to death, bodily

injury or damage to health or to an extraordinarily high property damage and/or financial loss (hereinafter "excluded usage"), unless the respective manufacturer or Wuerth has expressly consented to using the product for such excluded usage and Buyer obtains prior written consent from Wuerth. If, however, Buyer uses a product for such excluded usage without obtaining the aforesaid express consent, Buyer shall bear the exclusive risk for such use. Wuerth shall not assume liability for damages incurred in using the product for such excluded usage unless Wuerth's prior express and written consent has been obtained. Buyer undertakes to indemnify and hold Wuerth harmless from any loss, damage, expenses, costs or any third party claims for bodily injury and/or damage to property that were caused by using the products for excluded usage without obtaining the prior written consent of the respective manufacturer or Wuerth. To the same extent, Buyer shall be responsible for the suitability and safety of the goods for the applications used by the Buyer, unless otherwise expressly agreed. Wuerth gives no guarantee with regards to the goods, especially no guarantee in respect of the quality and state or durability of the goods.

2.1.2. Any description given of the Goods is given by way of identification only and the use of such description shall not constitute a sale by description.

2.1.3. Notwithstanding that a sample of the Goods has been exhibited to and inspected by the Buyer, it is hereby declared that such sample was not so exhibited and inspected as to constitute a sale by sample under the Contract.

2.1.4. Wuerth binds itself only to deliver Goods in accordance with the general description under which they were sold, whether or not any special or particular description shall have been given or shall be implied by law. Any such special or particular description shall be taken only as the expression of Wuerth's opinion in that behalf. Wuerth does not give any warranty as to the quality state condition or fitness of the Goods.

2.1.5. The above warranty does not extend to parts materials or equipment not manufactured by Wuerth in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Wuerth.

2.1.6. Wuerth shall be under no liability for the following measures and actions taken by the Buyer or third parties and the consequences thereof: improper remedy of defects, alteration of the Goods without the prior agreement of Wuerth, addition and insertion of materials.

2.1.7. Wuerth shall be under no liability in respect of any defect in the Goods or any other claim arising from any specification required or supplied by the Buyer.

2.1.8. Wuerth shall be under no liability in respect of any defect arising from unsuitable or improper use by the Buyer or third parties, fair wear and tear, willful damage, negligence, abnormal working conditions, defective or negligent handling, improper maintenance, unsuitable operating materials and replacement materials, poor work, unsuitable foundation, chemical, electro-technical/electronic or electric influences, failure to follow Wuerth's instructions (whether oral or in writing) misuse or alteration of the Goods without Wuerth's approval.

2.1.9. Wuerth is not liable for any loss damage or liability of any kind suffered by any third party directly or indirectly caused by remedial work carried out without Wuerth's prior written approval and the Buyer shall indemnify Wuerth against each loss liability and cost arising out of such claims.

2.1.10. Wuerth shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid in cleared funds by the due date for payment.

2.1.11. Wuerth shall be under no liability whatsoever in respect of any defect in the Goods arising after the expiry of the Warranty Period.

2.2. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall be notified in writing to Wuerth within seven days from the date of receipt of the Goods or (where the defect or failure was not apparent on reasonable inspection) within seven days from the date on which any hidden defects or failures was or ought to have been apparent, but latest within three (3) months of delivery. The Buyer shall also examine the Goods for defects before every use, in particular regarding safety and suitability for use. During use, the Goods shall be monitored constantly with regard to safety and defects. If there are even slight reservations concerning the suitability for use or the slightest reservations concerning safety, the Goods must not be used. Wuerth shall be given written notification immediately, specifying the reservations or the defect.

2.3. If the Buyer does not give due notification to Wuerth in accordance with the Condition VIII.2.2, Wuerth shall have no liability for any defect or failure or for any consequences resulting therefrom. Buyer is obligated to firstly send the Seller the defect



goods for examination, and any necessary expenses incurred in examining and subsequent performance, especially replacement or repair of defect goods shall only be borne by Wuerth if it is verified after the examination that a defect actually exists, to the extent that there is no increase in these costs and expenses due to the fact that the goods have been brought to a place other than the delivery address by the Buyer. If the goods are verified to be defective, the Seller is initially entitled, within a reasonable period, to choose subsequent performance by remedying the defect or, by choosing to deliver goods that are free from defects. If Wuerth elects to replace the defect goods, the Purchaser may return defective goods to the Seller for subsequent performance, and the risk of an accidental loss or deterioration of the goods does not pass until they have been accepted by Wuerth at the Wuerth's place of business. Where the Goods have not been so replaced or repaired within a reasonable time, despite a written warning from the Buyer, the Buyer shall be entitled to a reduction of the price in proportion to the reduced value of the Goods. In lieu of replacement or repair, Wuerth may, at its sole discretion, grant such a reduction to the Buyer. Upon a replacement or price reduction being made as aforesaid, the Buyer shall have no further claim against Wuerth.

2.4. When Wuerth has provided replacement of the Goods or given the Buyer a refund, the non-conforming Goods or parts thereof shall become Wuerth's property.

2.5. A determination of whether or not delivered Goods conform to Wuerth's specifications at the time of delivery shall be done solely by Wuerth analyzing the samples or records retained by Wuerth and taken from batches or production runs in which the Goods were produced in accordance with the methods of analysis used by Wuerth. In case of disaccord between the parties concerning the quality of a batch or production run of Goods supplied by Wuerth to the Buyer, Wuerth will submit representative samples of said batch or run to an independent laboratory reasonably acceptable to the Buyer to have determined whether or not the batch or run in question has met the aforementioned specifications. The results of such analysis shall be binding upon the parties and the party unable to uphold its position shall bear all costs of and incidental to the testing carried out by such independent laboratory.

2.6. Defects in portions of the Goods do not entitle the Buyer to reject the entire delivery of the Goods. Complaints, if any, do not affect the Buyer's obligation to pay as defined in Condition 5 above.

### 3.0 Hydrogen embrittlement

3.1. The Buyers are aware of the risk of hydrogen-induced brittle fracture and its various causes and problems to the Goods, in particular in the case of galvanic plated, high-duty products or products intended for hardened application in accordance with DIN ISO 4042 as from an ultimate tensile strength of 1000 N/mm<sup>2</sup> and surface or core hardness as from 320 Vickers pyramid implementation of the process and the procurement of the raw material in detail with Wuerth. For the Goods supplied hereof, the possibility of a hydrogen-induced brittle cannot be completely ruled out or eliminated.

3.2. If it becomes apparent that the risk of hydrogen embrittlement is reduced in the area in which the delivered Goods are used (e.g. in relation to construction or as a safety part), the Buyer undertakes to co-ordinate the implementation of the process and the procurement of the raw material in detail with Wuerth.

3.3. DIN ISO 4042 is deemed to constitute an essential element of the contract. If the operations comply with the approved procedure, any liability that arises as a result of any defect related to hydrogen brittle fractures shall be excluded unless Wuerth had caused such a defect deliberately or as a result of gross negligence.

### **IX. Force Majeure**

1. Wuerth shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Wuerth's obligations if the delay or failure was due to any cause beyond Wuerth's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Wuerth's reasonable control:

1.1. Act of God, explosions, floods, tempest fires or accidents;

1.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;

1.3. acts, restrictions, regulations, bye-laws, prohibitions, or measures of any kind on the part of any governmental parliamentary or local authority;

1.4. import or export regulations or embargoes;

1.5. interruption of traffic, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Wuerth or of a third party);

1.6. interruption of production or operation, difficulties in obtaining raw materials labour fuel parts or machinery;

1.7. power failure or breakdown in machinery.

## **X. Intellectual Property Rights**

1. If any claim is made against the Buyer that the Goods infringe, or that their use or resale infringes, the patent, copyright design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing or specification supplied by the Buyer, Wuerth shall indemnify the Buyer against all losses, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim or, paid or, agreed to be paid by the Buyer in settlement of the claim, up to a maximum cumulative amount of the value of the infringing Goods, provided that:

1.1 Wuerth is given full control of any proceedings or negotiations in connection with any such claim;

1.2 the Buyer shall give Wuerth all reasonable assistance for the purposes of any such proceedings or negotiations;

1.3 except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of Wuerth;

1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

1.5 Wuerth shall be entitled to the benefit of, and the Buyer shall accordingly account to Wuerth for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

1.6 without prejudice to any duty of the Buyer at common law, Wuerth shall be entitled to require the Buyer to take such steps as Wuerth may reasonably require to mitigate or reduce any such loss damages costs or expenses for which Wuerth is liable to indemnify the Buyer under this condition.

2. Should a third party prohibit Wuerth from manufacturing or delivering Products on citation of industrial property-right titles of

that third party, Wuerth may – to the extent that Wuerth is not responsible for the industrial property right violation – suspend the work / deliveries until such time as the legal situation has been clarified by the order party and third party. Wuerth is entitled to rescind the contract, should the ensuing delay render the continuance of the order unreasonable for Wuerth.

3. The order party assumes liability vis-à-vis Wuerth on the condition that his rendered performances do not violate third party industrial property rights, and indemnifies Wuerth from all third-party claims in this regard.

## **XI. Notices**

1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Regarding electronic communication, the electronic communication system used by Wuerth will serve as sole proof for the content and time of delivery and receipt of such electronic communication.

## **XII. Confidential Information**

1. Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) (and without prejudice to include all promotional items and samples and such like unless agreed otherwise) concerning the business and affairs of the other that it shall have obtained as a result of the discussions leading up to or the entering into of the Contract or which it may have learned during the term of the Contract.

2. Each of the parties hereto undertakes with the other to take all such steps as shall be necessary from time to time to ensure compliance with the provisions of this condition by its employees, agents, and sub-contractors, other companies within the group of companies to which it belongs.

## **XIII. Liability**

1. Wuerth shall only be liable for gross negligence and willful misconduct of its directors, officers, employees, agents and sub-contractors.

2. Wuerth shall be under no liability whatsoever where this arises from a reason beyond its reasonable control as provided in Condition 9 or from an act or default of the Buyer.



3. In no event shall Wuerth be liable for loss of profit or goodwill, loss of production or revenue or any type of special, indirect, incidental or consequential loss whatsoever (including loss or damage suffered by the Buyer as a result of an action brought by a third party) even if such losses were reasonably foreseeable, or Wuerth had been advised of the possibility of the Buyer incurring the same.

4. Where time of performance has been agreed by Wuerth to be of the essence of the Contract, and Wuerth fails to comply with its obligations in due time, so that the Buyer becomes entitled to compensation in accordance with Condition VI.5, Wuerth's liability shall be limited to not more than an amount of 0.1% of the value of the delayed Goods for each full week of delay, in total to a maximum cumulative amount of 3%, of the value of the delayed Goods.

5. If the Buyer becomes entitled to compensation arising out of Wuerth's non-delivery of Goods as specified in Condition 6.6, Wuerth's liability shall be limited in total to a maximum cumulative amount of 10%, of the value of the undelivered Goods.

6. The remedies set out in Condition 8 are the Buyer's sole and exclusive remedies for non-conformity of or defects in the Goods and Wuerth's liability for the same shall be limited in the manner specified in Condition 8.

7. Without prejudice to the sub-limits of liability applicable under this Condition XIII or elsewhere in these Conditions, Wuerth's maximum total liability (including any liability for acts and omissions of its employees agents and sub-contractors) in respect of any claim for defective performance, breach of contract, compensation, indemnity, tort, misrepresentation, negligence at law or equity and any other damages or losses which may arise in connection with its performance or non-performance under the Contract, shall not exceed half of the price of the Goods in question.

8. No action shall be brought against Wuerth later than 12 months after the date it becomes aware of the circumstances giving rise to a claim, or the date when it ought reasonably to have become aware, and in any event, no later than 12 months after the end of the Warranty Period.

#### **XIV. Export Control**

The goods supplied are intended to remain in the country of delivery agreed upon with the Buyer. The Buyer may not export goods to the country that are subject to embargo provisions.

The goods supplied are particularly subject to European, American and Malaysian export controls and embargo provisions. It is the Buyer's responsibility to inform itself of the relevant export and/or import provisions or restrictions and to obtain according permits, if necessary. Buyer will impose the aforesaid obligations on its customers.

#### **XV. Termination**

1. On or at any time after the occurrence of any of the events in condition 14.2 Wuerth may stop any Goods in transit, suspend further deliveries to the Buyer, exercise its rights under Condition 7 and/or terminate the Contract with the Buyer with immediate effect by written no-notice to the Buyer

2. The events are:-

2.1. the Buyer being in breach of an obligation under the Contract;

2.2. the Buyer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Buyer's winding up or dissolution;

2.3. the making of an administration order in relation to the Buyer or the appointment of a receiver over or an encumbrancer taking possession of or selling any of the Buyer's assets;

2.4. the Buyer making an arrangement or composition with its creditors generally or applying to a Court of competent jurisdiction for protection from its creditors.

2.5. any unseen and unforeseeable event outside of Wuerth's control, which causes the economic value of the sale to the Buyer to decrease significantly or which causes the performance of its obligations in the contract entered into with the Buyer to become significantly more difficult, unreasonable or impossible.

For the avoidance of doubt, the Buyer shall not be entitled to claim any compensation against Wuerth under the exercise of the termination rights contained herein.

#### **XVII. General**

1. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

2. No waiver by Wuerth of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

3. The Buyer shall only be entitled to assign its rights against Wuerth upon receipt of Wuerth's written agreement obtained in advance.

4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

5. No person who is not a party to this Contract (including any employee, officer, agent, representative, or sub-contractor of either party) shall have any right to enforce any terms of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties, which agreement must refer to this Condition 15.4.

6. The interpretation, construction and effect as well as the Contract itself shall be governed by the Laws of Malaysia and any dispute arising out of or in connection to this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Malaysia in accordance with the Arbitration Rules of the Kuala Lumpur Regional Center of Arbitration ("KLRCA Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause. The Tribunal shall consist of a sole arbitrator to be appointed by the Chairman of the KLRCA. The language of the arbitration shall be English.

7. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any Contract for the sale of Goods.

8. Buyer undertakes to abide by Wuerth Code of Compliance (a most updated copy of which can be accessed and retrieved at [www.wuerth.my](http://www.wuerth.my)). In case of any violation of Wuerth Code of Compliance by Buyer, Wuerth shall be entitled to terminate any agreement concluded by the parties hereto without bearing any liability, and Buyer shall defend, indemnify and hold Wuerth harmless from any direct or indirect loss, expense, costs and third party claims arising therefrom.