

General terms and conditions of sale and delivery Caldic Japan Co., Ltd.

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

'Applicable Law': means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

'Business Day': means a day other than a Saturday, Sunday or public holiday;

'Conditions': means the Supplier's terms and conditions of sale set out in this document;

'Confidential Information': means any commercial, financial or technical information, information relating to the Goods, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

'Contract': means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;

'Control': means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be construed accordingly; **'Customer'**: means the named party in the Contract which has agreed to purchase the Goods from the Supplier and whose details are set out in the Order;

'Documentation': means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Goods; **'Force Majeure'**: means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

'Goods': means the goods and Documentation and other physical material set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;

'Location': means the address or addresses for delivery of the Goods as set out in the Order;

'Order': means an order for the Goods from the Supplier placed by the Customer in the Supplier's sales order form;

'Price': has the meaning given in clause 3.1;

'Specification': means the description or Documentation provided for the Goods and their packaging set out or referred to in the Contract;

'Supplier': means Caldic Japan Co., Ltd. incorporated in 9-1, Kaigan 1-chome, Minato-ku, Tokyo, 105-0022, Japan whose registered office is at 9-1, Kaigan 1-chome, Minatoku, Tokyo, 105-0022, Japan

'GST': means Goods and Services Tax or any other similar tax or fiscal tax applying to the sale of the Goods & Services in Japan; and

'Warranty Period': has the meaning given in clause 9.1.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices and annexes (if any);

1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.6 a reference to a gender includes each other gender;

1.2.7 words in the singular include the plural and vice versa;

1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);

1.2.10 a reference to legislation is a reference to that legislation as in force at the date of the Contract; 1.2.11 a reference to legislation includes all subordinate legislation made as at the date of the Contract under that legislation; and

1.2.12 a reference to any action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than Japan, be deemed to include a reference to that which most nearly approximates to the Jaan law equivalent in that jurisdiction.

2 Application of these conditions

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Supplier and the Customer respectively.

2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Conditions.

2.5 If the Supplier is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.

2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:

2.6.1 the Supplier's written acceptance of the Order; or

2.6.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).

2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.

2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.

2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.

3 Price

3.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed (the Price).

3.2 Unless stated in the Order the Prices are inclusive of packaging, delivery, insurance, shipping carriage, and all other related charges or taxes but are exclusive of GST.

3.3 The Customer shall pay any applicable GST to the Supplier on receipt of a valid GST invoice.

3.4 The Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods.

4 Payment

4.1 The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order.

4.2 The Customer shall pay all invoices (provided by the Supplier or the Supplier's affiliates):

4.2.1 in full without deduction or set-off, in cleared funds by the due date for payment stated in the invoice; and

4.2.2 to the bank account nominated by the Supplier.

4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 12% a year; and 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

4.3.3 Notwithstanding any other provision of these Conditions or to an Order or to the Contract, the Supplier reserves the right to withhold all further deliveries of Goods under this Contract or any other contracts with the Customer until full payment of any outstanding invoice is received in cleared funds. The withholding of deliveries in accordance with this clause shall not constitute a breach of the Supplier's obligations under this Contract.

5 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

6 Delivery

6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order.

6.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location specified by the Supplier or its nominated carrier (as the case may be).

6.3 The Supplier may deliver the Goods in

instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.4 The Customer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.

6.5 Any change in delivery date from the date set out in the Order and as requested by the Customer shall be subject to the Supplier's approval.

6.6 The Goods may be delivered by instalments if specified in the Order. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

6.7 Delivery of the Goods shall be accompanied by a delivery note stating: **6.7.1** the date of the Order;

6.7.2 the product numbers, type and quantity of the Goods in the consignment; and **6.7.3** any special handling instructions.

6.8 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.

6.9 Upon Supplier's request, packaging material is to be promptly returned to the Supplier in accordance with the Supplier's instructions, which may include the provision of packaging and price list information.

6.10 The Supplier shall not be liable for any delay in or failure of delivery caused by:

6.10.1 the Customer's failure to make the Location available;

6.10.2 the Customer's failure to prepare the Location as required for delivery of the Goods;

6.10.3 the Customer's failure to provide the Supplier with adequate instructions for delivery of the Goods; **6.10.4** Force Majeure.

6.11 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all reasonable costs and expenses incurred by the Supplier in doing so.

6.12 If 10 Business Days following the due date for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 6.11.1 and 6.11.2. The Supplier shall:

6.12.1 deduct all reasonable storage charges and costs of resale; and

6.12.2 account to the Customer for any excess of the resale price over, or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

7 Risk

Risk in the Goods shall pass to the Customer on delivery.

8 Title

8.1 Title to the Goods shall pass to the Customer in accordance with parties' agreed INCO terms. **8.2** Until title to the Goods has passed to the Customer, the Customer shall:

8.2.1 hold the Goods as bailee for the Supplier; **8.2.2** store the Goods separately from all other material in the Customer's possession;

8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered; **8.2.4** insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;

8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;

8.2.6 not remove or alter any mark on or packaging of the Goods;

8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 14.1.1 to 14.1.4 or 14.2.1 to 14.2.13.; and **8.2.8**

on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.

8.3 Notwithstanding clause 8.2, the Customer may use the Goods in the ordinary course of its business until such time as it becomes aware or ought reasonably to have become aware that an event specified in clauses 14.1.1 to 14.1.4 or 14.2.1 to 14.2.13 has occurred or is likely to occur.

8.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 14.1.1 to 14.1.4 or 14.2.1 to 14.2.13, the Supplier may:

8.4.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and

8.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

9 Warranty

9.1 The Supplier warrants that the Goods shall, for a period of 7 days from delivery (the Warranty Period) conform in all material respects to the Order.

9.1.1 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, replace or refund the Price of any of the Goods that do not comply with clause 9.1, provided that the Customer serves a written notice on Supplier:

(a) during the Warranty Period in the case of defects discoverable by a physical inspection; or (b) in the case of latent defects, within 7 days from the date on which the Customer became aware (or should reasonably have become aware) of the defect;

9.1.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising; 9.1.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and

9.1.4 returns the defective Goods to the Supplier at the Customer's expense.

9.2 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any of the Goods that are replaced with effect from the date of delivery of the replaced Goods.

9.3 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.1:

9.3.1 where such failure arises by reason wilful damage or negligence;

9.3.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on their use or storage; 9.3.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;

9.3.4 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.1.

9.3.5 where the manufacturer of the Goods recalls them owing to a manufacturing defect. **9.4** Except as set out in this clause 9:

9.4.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and 9.4.2

shall have no liability for their failure to comply with the warranty in clause 9.1 and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10 Indemnity and insurance

The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses which the Supplier may suffer or incur directly or indirectly from the Customer's breach of any of its obligations under the Contract.

11 Limitation of liability

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by

negligence or misrepresentation) shall be as set out in this clause 11.

11.2 Subject to clauses 11.5 and 11.6, the Supplier's total liability shall not exceed the Price.

11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.

11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect): **11.4.1** loss of profit;

11.4.2 loss of data;

11.4.3 loss of use;

11.4.4 loss of production;

11.4.5 loss of contract;

11.4.6 loss of opportunity;

11.4.7 loss of savings, discount or rebate (whether actual or anticipated);

11.4.8 harm to reputation or loss of goodwill.

11.5 The limitations of liability set out in clauses 11.2 to 11.4 shall not apply in respect of any indemnities given by the Customer under the Contract. **11.6**

Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

11.6.1 death or personal injury caused by negligence;

11.6.2 fraud or fraudulent misrepresentation; **11.6.3**

any other losses which cannot be excluded or limited by Applicable Law;

12 Confidentiality and Data Privacy

12.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

12.1.1 any information which was in the public domain at the date of the Contract;

12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement; **12.1.3** any information which is independently developed by the Customer without using information supplied by the Supplier; or

12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.

12.2 This clause 12 shall remain in force for a period of five years from the date of the Contract.

12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

12.4 The Supplier collects and processes the personal and company data that it receives from the Customer for the purpose of the execution of the Contract, customer management, purchases, sales and/or marketing

purposes. The Customer's personal and company data and other Confidential Information received by the Supplier shall only be passed on to processors, recipients and/or third parties in so far as this is necessary for the Supplier's observance and performance of the Contract and the Order.

13 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30 days, either party may terminate the Contract by written notice to the other party.

14 Termination

14.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if: **14.1.1** the Customer commits a material breach of the Contract and such breach is not remediable; **14.1.2** the Customer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach; **14.1.3** the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue; or **14.1.4** any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled. **14.2** The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer: **14.2.1** stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so; **14.2.2** is unable to pay its debts either within the meaning of section 465 of the Companies Act 2016 or if the Supplier reasonably believes that to be the case; **14.2.3** becomes the subject of a company voluntary arrangement under the Companies Act 2016; **14.2.4** becomes subject to a moratorium under Section 398 of the Companies Act 2016; **14.2.5** becomes subject to Judicial Management under Section 404 of the Companies Act 2016; **14.2.6** becomes subject to a scheme of arrangement under Section 366 of the Companies Act 2016;

14.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; **14.2.8** has a resolution passed for its winding up; **14.2.9** has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it; **14.2.10** is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced; **14.2.11** has a freezing order made against it; **14.2.12** is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items; **14.2.13** is subject to any events or circumstances analogous to those in clauses 14.2.1 to 14.2.12 in any jurisdiction

14.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control

[or if it is realistically anticipated that it shall undergo a change of Control within two months].

14.4 The right of the Supplier to terminate the Contract pursuant to clause 14.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.

14.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 14, it shall immediately notify the Supplier in writing.

14.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

15 Notices

15.1 Any notice or other communication given by a party under these Conditions shall: **15.1.1** be in writing and in English; **15.1.2** be signed by, or on behalf of, the party giving it (except for notices sent by email); and **15.1.3** be sent to the relevant party at the address set out in the Contract.

15.2 Notices may be given, and are deemed received: **15.2.1** by hand: on receipt of a signature at the time of delivery; **15.2.2** by post: at 9.00 am on the second Business Day after posting; by fax: on receipt of a transmission report

from the correct number confirming uninterrupted and error-free transmission; and
15.2.3 by email on receipt of a read receipt email from the correct address.

15.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 15.1 and shall be effective:

15.3.1 on the date specified in the notice as being the date of such change; or

15.3.2 if no date is so specified, ten Business Days after the notice is deemed to be received.

15.4 This clause 15 does not apply to notices given in legal proceedings or arbitration.

16 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

17 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

18 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

19 Entire agreement

19.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

19.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

19.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

20 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

21 Assignment

21.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

21.2 Supplier is entitled to assign its trade receivable arising out of this Contract to any third party.

22 Set-off

22.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

22.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

23 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

24 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

25 Severance

25.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

25.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate

in good faith in order to agree the terms of a mutually acceptable alternative provision.

subject matter or formation (including non-contractual disputes or claims).

26 Waiver

26.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy. **26.2** No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

26.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

27 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

28 Conflicts within contract

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

29 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

30 Third party rights

30.1

A person who is not a party to this Agreement has no right to enforce any term of this Agreement.

31 Governing law

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

32 Jurisdiction

The parties irrevocably agree that the courts of Japan shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its