



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

1 **Scope**

- 1.1 These standard terms and conditions of sale and purchase (“**Terms and Conditions**”) shall apply to and be a part of all contracts, purchase orders, and work orders, between the Packaging / Printed Carton Vendor, who is a member of The Bombay Master Printers’ Association (“**Vendor**”) and you, his client (“**Buyer**”).
- 1.2 These Terms and Conditions shall also apply to all existing agreements and pre-contractual relationships, including to any offer made by the Vendor, which are outstanding as on the date of these Terms and Conditions.
- 1.3 All general conditions set forth by the Buyer in any document shall not be binding on the Vendor, unless and to the extent they have been explicitly accepted by the Vendor in writing.

2 **Request For Quotations and Offers**

- 2.1 The Buyer shall provide the Vendor with a request for quotation (“**RFQ**”) detailing the packaging / printed carton requirement of the Buyer
- 2.2 The Vendor may, on receipt of an RFQ, provide the Buyer with an offer containing details based on the RFQ, which may include (i) type of product offered, (ii) price, (iii) quantity, (iv) period for which the offer is open, (v) delivery period, (vi) conditions resulting in increase in the price, and (vii) any other specifications as may be requested in the RFQ (“**Offer**”).
- 2.3 The details specified in the Offer, including the price, are based on elements specified by the Buyer in the RFQ. In case of any change to such elements, details in the Offer, including the price, are subject to change.
- 2.4 Unless stipulated otherwise, an Offer is valid for a period of 30 (thirty) days from the date of the Offer and is deemed to expire automatically and without any further act on the part of either party in the event the Offer is not confirmed by a Purchase Order (*as defined hereinbelow*) within the period of 30 (thirty) days from the date of the Offer.

3 **Purchase Orders, and their Acceptance**

- 3.1 The Buyer shall provide binding purchase orders to the Vendor (“**Purchase Orders**”) pursuant to the Offer and these Terms and Conditions. Each of the Purchase Orders shall be signed by an authorized representative of the Buyer and shall clearly specify (i) details of the required products; (ii) quantity of the required products; (iii) delivery date / schedule; (iv) the place of final destination of the products; and (v) and other reasonable instructions or requirements (if applicable).
- 3.2 Particular services such as rush orders or exceptional JIT (Just in Time) delivery may be mentioned separately, as required.
- 3.3 Once a binding Purchaser Order is received by the Vendor in accordance with the terms of these Terms and Conditions:



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 3.3.1 the Buyer shall be bound to purchase the quantities of the products set out in the Purchase Order and shall not cancel the Purchase Order or any part thereof without prior written consent of the Vendor, which shall be at the sole discretion of the Vendor; and
- 3.3.2 any variation to any element of the Purchase Order requires written consent of the Vendor, and may result in the suitable revision in the price.

4 Price and Payment Terms

- 4.1 The price payable in respect of the Purchase Orders are based on raw material prices valid on the date of the receipt of the Purchase Order by the Vendor. In the event of a change of these raw material prices, the parties undertake to renegotiate the prices for the agreed period. If no reasonable agreement can be reached, the Vendor reserves the right to terminate the contract unilaterally.
- 4.2 Each delivery of the products shall be accompanied by an invoice and/or delivery memo from the Vendor to the Buyer setting out details as per the accepted Purchase Order.
- 4.3 The payment for each Purchase Order of the products supplied by the Vendor pursuant to these Terms and Conditions shall be made by the Buyer as specified in the Purchase Order or within 30 (thirty) days (in the event the Purchase Order does not specify any such period) from the date of the invoice prepared by the Vendor pursuant to Clause 4.2, without any deduction whether by way of set-off, counterclaim, discount or otherwise.
- 4.4 In the event the Buyer is unable to pay the Vendor the price in relation to the relevant Purchase Order(s) within the time frame specified in Clause 4.3, (i) the Buyer shall be liable to pay to the Vendor an interest of 2% (two per cent) per month on each outstanding invoice amount, and (ii) all outstanding invoices pursuant to outstanding Purchase Orders shall become due and payable automatically and immediately to the Vendor.
- 4.5 In case of any cancellation or non-acceptance of delivery of the products pursuant to the Purchase Order, the Vendor is entitled to invoice to the Buyer the full value (including taxes) of the Purchase Order cancelled or not accepted.
- 4.6 Unless the parties agree otherwise in writing, the costs of package, transport insurance, import and export duties as well as all other levies and taxes in respect of the delivered goods and transport shall be borne by the Buyer.
- 4.7 In the event the execution of the Purchase Order requires development, engineering, costs of samples, dummies and proofs, the Vendor is entitled to pass on these costs to the Buyer.
- 4.8 The Buyer **shall bear** and pay **all the taxes** in relation to **the Purchase Orders, including but not limited to excise, sales tax (central and state), entry tax, turnover tax, works contract tax, service tax, value added tax, barrier tax.**

5 Delivery, Invoicing

- 5.1 The Vendor shall dispatch the products for delivery as per the Purchase Order.
- 5.2 Each delivery shall be accompanied by an LR/ delivery note detailing details of the product delivered.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 5.3 The title and risk with respect to the products shall be passed from the Vendor to the Buyer upon the delivery of the relevant products by the Vendor as per the Purchase Order.
- 5.4 If delivery of the total quantity is not accepted by the Buyer within the agreed period, the Buyer will be liable in respect of the goods as well as additional costs of storage.
- 6 **Acceptance of goods**
- 6.1 Upon delivery of the products, the Buyer shall immediately and as thoroughly as possible inspect the products. In the event of any discovered damage during transport, or shortage / difference in quantity, (collectively, “**Preliminary Discrepancy**”), the Buyer will remark on the LR/delivery note and notify the Vendor of such Preliminary Discrepancy forthwith and ultimately within 24 (twenty-four) hours of delivery. In the event no such notification is made within this period of 24 (twenty-four) hours of delivery, the Buyer shall be deemed to have accepted delivery of the products, without any Preliminary Discrepancy.
- 6.2 The Buyer may avail of a period of 1 (one) week from delivery to inspect the products according to the acceptance criteria set forth in the Purchase Order or any other agreed document, and to report any defects in the products, other than the Preliminary Discrepancy. On expiry of this period, the Buyer shall be deemed to have accepted the products and shall not be allowed to submit any further complaints relating to the products subsequently.
- 6.3 Under no circumstance can the Buyer make a claim against the Vendor after the goods delivered, or part thereof, have been used, processed or converted.
- 6.4 Products acknowledged by the Vendor as being defective will either be corrected/rectified or credited. The Vendor shall not be liable to pay compensation for consequential losses. The ownership of the defective goods shall remain with the Vendor, and the Vendor shall be at liberty to exercise his right on the goods by taking them back for correction / rectification. If the same cannot be done, then he shall destroy the same and submit a destruction certificate.
- 6.5 If a part of the delivery gives rise to a reason for a claim, the principle of mitigation for adverse consequences for the remainder of the delivery will be applied.
- 7 **Tolerances**
- 7.1 **Printing**: Printing takes place according to internationally recognised printing standards and agreed tolerances. Printing proofs, texts and bar codes approved by the Buyer are binding. The Vendor will submit his own shade card for approval, from the first commercial print run. Production according to these standards cannot give rise to complaints.
- 7.2 **Quantity**: Tolerances of the quantities delivered are subject to the individual job requirements with regard to quantity, material, process type, size, etc. The appropriate percentage of tolerance shall be specified in the Purchase Order. In the absence of a specification in the order acceptance, the Vendor is deemed to have performed adequately if quantities delivered do not vary by more than 10% (ten per cent) of that as per the accepted Purchase Order.
- 7.3 **Shelf Life of Cartons**: The shelf life of cartons for use in automatic packing cartonator lines will be 15 (fifteen) days for machine runnability, in ideal storage conditions. Other cartons will have a shelf life of 30 (thirty) days.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 7.4 Quality: The Vendor accepts responsibility for the quality of the cartons only if he had full responsibility for the purchase of the board. The Buyer acknowledges that the quality of the products will be affected when stored longer than 3 (three) months after the date of manufacture.
- 7.5 If the board reserved for the order is not converted within 30 (thirty) days of the agreed delivery time for reasons arising from the Buyer's side, the Vendor is entitled to invoice the board to the Buyer and storage charges may be applied.
- 7.6 Packaging: While packaging specifications must be defined in the Purchase Order or the order acceptance, in the absence thereof, the Vendor shall ensure that goods are packed securely to reach the Buyer's warehouse for storage in good condition.
- 7.7 Projects, drawings, sketches, printing proofs, blanks, and other property of the Buyer are stored with the Vendor at the risk of the Buyer. The Vendor shall not be liable to store such materials and property beyond a period of 1 (one) year from their last use. In case of specific legislation related to the sector in which the Buyer operates, a longer storage term, not exceeding that provided by law may be applicable.

8 Representation and Warranties

- 8.1 Each party hereto unconditionally represents and warrants to the other that:
- 8.1.1 it has obtained all necessary Indian statutory / Governmental approvals to enter into and perform its obligations under these Terms and Conditions;
- 8.1.2 it is duly incorporated and validly existing under applicable law of the country in which it is incorporated and functioning, and it has the full power and authority, including, under its memorandum and articles of association, and under all requisite actions (corporate, statutory or otherwise), to enter into and to perform its obligations under these Terms and Conditions which when executed will constitute valid and binding obligations as per applicable law of the country in which it is incorporated and functioning in accordance with its terms, and the entry and delivery of, and the performance by it of these Terms and Conditions will not result in any breach of any provision of any agreement or any court order, judgment, injunction, award, decree or writ that is binding on it or its assets, or result in any claim by a third party against the other party; and
- 8.1.3 it is not in receivership or liquidation or insolvency and has taken no steps to enter into liquidation or insolvency, and no petition has been present to that effect. To the best of its knowledge, there are no grounds on which a petition or application could be based to this effect.
- 8.2 The Buyer represents and warrants that all material submitted to the Vendor is original, does not violate any law, does not infringe the copyrights, trademarks, trade names, or patents of any person, does not constitute unfair competition and contains no matter which is libellous, slanderous, an invasion of privacy or publicity, an unlawful appropriation of the name or likeness of, or is otherwise injurious to the rights of any person, and that the Buyer has obtained all necessary consents for publication of the material on the carton / product prior to submission to the Vendor.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

8.3 Each party shall promptly notify the other of any change in the status of any of the above representations which it has actual knowledge of.

9 Intellectual and Industrial Property Rights

9.1 The information and data contained in any document or support (i.e. designs, dies, negatives, plates, printing cylinders, forming tools, films and digital data) supplied and prepared by the Vendor shall remain the Vendor's exclusive property along with all intellectual property rights (including but not limited to patent rights, copyrights, trademarks, designs) attached thereto. Therefore, no right, title or interest is transferred to the Buyer in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and other intellectual property rights relating to the goods even if the Buyer has financially contributed to their creation.

9.2 The Buyer shall defend, indemnify and hold harmless the Vendor from and against any and all claims, losses, damages, costs, penalties, liabilities, judgments, amounts paid in settlement, fines and expenses (including, without limitation, court costs and reasonable fees of attorneys and other professionals) arising out of or in connection with any infringement of intellectual and/or industrial property rights in the case of:

9.2.1 the production or reproduction in accordance with the order and the instructions of the Buyer, and/or;

9.2.2 materials and/or texts, trademark designs and construction for opening and closing of the carton made available to the Vendor by the Buyer or on behalf of the Buyer by third parties.

9.3 The Vendor recognizes that the following intellectual property rights covering or relating to the products are the exclusive property of the Buyer. The Vendor shall not infringe, assign, use, apply or otherwise appropriate any such rights, other than under and in accordance with the provisions of these Terms and Conditions for the purpose of performance of obligations contained under or in pursuance of these Terms and Conditions:

9.3.1 patents of the Buyer in respect of the products;

9.3.2 trademarks of the Buyer used on or relative to the products; and

9.3.3 copyright in all leaflets and technical literature (including product information literature) supplied, if any, in respect of the products.

9.4 The Buyer hereby grants to the Vendor an exclusive license to use the specifications, trademarks, leaflets and technical literature to the extent necessary for the Vendor to comply with its obligations under these Terms and Conditions.

9.5 Each party shall promptly inform the other of any infringements or possible infringements which it has actual knowledge of.

10 Confidentiality

10.1 Each party shall keep all information and data about the other party, their projects and activities under these Terms and Conditions letter strictly confidential.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 10.2 This confidentiality obligation does not apply to information and data which are publicly available or which become publicly available other than through disclosure by the receiving party.
- 10.3 During the continuance of the business relationship between the parties and after termination for any reason whatsoever, each party undertakes to the other party not to issue any press release or make any public statement or other communication (written or otherwise) about the matters contained in these Terms and Conditions or any document referred to in it without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed).
- 10.4 Upon termination of these Terms and Conditions or at any time, upon request by a party, the other party shall return or destroy all such information and data, as directed by the former-mentioned party.

11 Limitation of Liability

- 11.1 The liability of the Vendor is limited to the amount of the invoice, excluding taxes. In no event shall either party be liable, whether in contract, tort or otherwise for any special, indirect, incidental or consequential damages arising out of or in connection with these Terms and Conditions or any breach or non-performance of any provisions hereof.
- 11.2 Incorrect storage or use of the products by the Buyer precludes the liability of the Vendor.
- 11.3 The Buyer assumes all liability for all content of material required to be printed on the cartons / products (including but not limited to texts, representations, names, photographs, and illustrations) and agrees to indemnify and hold the Vendor, and its directors, officers, agents, employees, members and successors harmless against any and all liability, loss, and expense, including attorneys' fees, costs, and legal expenses in any tribunal, arising for claims for libel, slander, unfair competition, infringements of trademarks, copyrights, and other proprietary rights, violations of rights of privacy or publicity, and any other claims of any nature arising from or attributable to the publication of any material submitted by or on behalf of the Buyer.

12 Validity of these Terms and Conditions and Termination

- 12.1 The parties shall have the right to terminate these Terms and Conditions, at any time, in the event of any of the following circumstances:
- 12.1.1 both parties mutually agree in writing; or
- 12.1.2 either party fails to rectify any breach of its obligations within 30 (thirty) days of receiving a written notice from the other party requiring it to do so; or
- 12.1.3 either party stops or suspends supply of the products, becomes insolvent or sells or parts with possession of the whole of its assets or undertaking; or
- 12.1.4 an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken (other than frivolous or vexatious applications, proceedings, notice or steps) for the winding-up or dissolution of either party or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- 12.1.5 a change in control of either party takes place.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 12.2 The Vendor shall have the right to terminate these Terms and Conditions at any time if the Buyer stops or suspends payment with respect to the products for a period exceeding 30 (thirty) days from the due date of such payment.
- 12.3 Effect of Termination: Upon termination of these Terms and Conditions, all rights and obligations hereunder shall cease to exist, except for (i) supplies pending by the Vendor to the Buyer and all existing outstanding Purchase Orders processed by the Vendor (as notified by the Vendor to the Buyer) pending delivery to the Buyer; and (ii) the payment of all unpaid invoices due, including invoices in relation to existing outstanding Purchase Orders, from the Buyer to the Vendor.
- 12.4 Any termination of these Terms and Conditions (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of these Terms and Conditions which is expressly or by implication intended to come into force or continue in force on or after such termination.
- 12.5 Survival: The provisions of Clauses 9 (*Intellectual and Industrial Property Rights*), 10 (*Confidentiality*), 11 (*Limitation of Liability*), 12.5 (*Survival*), 14 (*Governing Law and Jurisdiction*), 15 (*Dispute Resolution*), and 16 (*Miscellaneous*) shall survive termination of these Terms and Conditions.
- 13 **Force Majeure**
- 13.1 The Vendor may defer the date of delivery or discontinue such delivery or cancel the contract or reduce the volume or quantity of the goods ordered by the Buyer, and shall not be liable and/or be in breach of any provision of these Terms and Conditions for any such delay, cancellation or failure on its part to perform any obligation hereunder due to a force majeure event or any other cause beyond the control of the Vendor including, without limitation, acts of God, acts, regulations and/or applicable law of any Government, war, national emergency, defence requirements, terrorist attacks, riot, civil commotion, fire, explosion, flood, earthquakes, storm, epidemic, accident, unavailability of raw material, malfunction of machinery or apparatus, lock-outs, strikes, other forms of industrial unrest, other labour disputes (whether or not relating to either party's workforce), or restraint or delay affecting carriers or inability or delay in obtaining supplies of adequate or suitable raw materials including fuel and power, or sharp increase in the price of such raw materials, or non- timely performance by any third party.
- 13.2 The Vendor shall have used reasonable diligence to avoid such events or ameliorate its effects. Except where the nature of the event shall prevent it from doing so, the Vendor shall notify the Buyer in writing after the occurrence of such event and shall in every instance, to the extent reasonable and lawful under the circumstances, use commercially reasonable efforts to remove or remedy such cause with all reasonable dispatch.
- 13.3 Provided that, if the event in question continues for a continuous period in excess of 6 (six) months, the Buyer shall be entitled to give notice in writing to the Vendor to terminate the contract.
- 14 **Governing Law and Jurisdiction**



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 14.1 The laws of India shall govern all matters arising out of or relating to these Terms and Conditions, and all of the transactions it contemplates (including the Purchase Orders), including without limitation, its validity, interpretation, construction, performance and enforcement and any disputes or controversies arising therefrom or related thereto.
- 14.2 Subject to the other terms of Clause 15 below, courts in India shall have exclusive jurisdiction in respect of disputes arising out of these Terms and Conditions or otherwise between the parties to these Terms and Conditions and no other courts shall have jurisdiction. The Parties agree that courts in the city of the registered office / principal place of business of the Vendor shall have exclusive jurisdiction in respect of any disputes arising out of these Terms and Conditions or otherwise between the parties to these Terms and Conditions.
- 15 Dispute Resolution**
- 15.1 In the event any party is in breach of any of the terms of these Terms and Conditions, the other party may serve written notice to require such party in breach to cure such breach within 30 (thirty) days of the receipt of such written notice thereof.
- 15.2 In the case of any dispute or claim arising out of or in connection with or relating to these Terms and Conditions, including any question regarding its existence, validity, interpretation or termination, or the breach (where such breach has not been cured by the party in breach within the period of 30 (thirty) days of a written notice thereof), termination or invalidity hereof (“**Dispute**”), the parties shall attempt to first resolve such dispute or claim through discussions between senior executives of each of the parties, duly authorized to resolve such disputes.
- 15.3 If the Dispute is not resolved through such discussions within 30 (thirty) days after one party has served a written notice on the other party requesting the commencement of such discussions, the Dispute shall be referred to and finally resolved by arbitration in accordance with the [Indian Arbitration and Conciliation Act, 1996 / the arbitration rules of the London Court of International Arbitration, India Chapter (“**LCIA India Arbitration Rules**”)]¹ for the time being in force, which rules are deemed to be incorporated by reference in this Clause 15.
- 15.4 The arbitration tribunal shall consist of 3 (three) arbitrators, with each Party appointing 1 (one) arbitrator and the 2 (two) arbitrators so appointed together appointing the 3rd (third) arbitrator (“**Arbitration Board**”).
- 15.5 The arbitration proceedings shall be in the English language and the seat shall be principal place of business / the city of the registered office of the Vendor.
- 15.6 Enforcement: Judgement upon any arbitral award rendered hereunder may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 15.7 Costs and Nature of Award: The arbitral award shall be made in accordance with the [LCIA India Arbitration Rules] and the Arbitration Board shall also have the right to decide on the costs of arbitration proceedings. Any award made by the Arbitration Board shall be final and binding on each of the Parties that were parties to the dispute.

¹ **Note**: The LCIA India Arbitration Rules are time bound and friendly to the parties to a dispute. However, if so desired, the Indian Arbitration Act is also an option.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 15.8 Co-operation: Each Party shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under these Terms and Conditions.
- 15.9 Interim Reliefs: Parties may approach competent courts in India for any interim measures of protection or pre-award relief.
- 15.10 Continuing Obligation: Subject to the award of the Arbitration Board, neither the existence of any Dispute nor the fact that any arbitration is pending hereunder shall relieve any of the parties of their respective obligations under these Terms and Conditions. Subject to any award of the Arbitration Board, the pendency of a Dispute in any arbitration proceeding shall not affect the performance of the obligations under these Terms and Conditions.
- 15.11 Jurisdiction: Subject to Clauses 15.1 to 15.10 (both inclusive), the courts of principal place of business / the city of the registered office of the Vendor shall have exclusive jurisdiction in respect of these Terms and Conditions.
- 16 Miscellaneous**
- 16.1 Notices: Parties shall strive to ensure that every notice or communication under these Terms and Conditions is in writing and may be delivered personally or sent by post, reputable courier or transmitted by fax as well as by e-mail. In the case of posting or reputable courier, the envelope containing the notice or communication must be addressed to the intended recipient at the authorised address of that party and must be properly stamped or have the proper postage (or fees) prepaid for delivery by the most expeditious service available (which will be airmail if that service is available) and, in the case of a fax, the transmission must be sent to the intended recipient at the authorised number of that party.
- 16.2 Assignment: Neither party can assign these Terms and Conditions or any of its rights and obligations hereunder to a third party, without the prior written consent of the other party to these Terms and Conditions.
- 16.3 Amendments: Any provision of these Terms and Conditions may be amended or waived if, and only if such amendment or waiver is in writing and signed, in the case of an amendment by each of the parties or in the case of a waiver, by the party against whom the waiver is to be effective.
- 16.4 Waiver: No omission or delay on the part of any party in requiring a due and punctual fulfilment by the any other party of its obligations hereunder shall be deemed to constitute a waiver of any of such party's rights to require such due and punctual fulfilment and in any event shall not constitute or be construed as a continuing waiver and/or as a waiver of other or subsequent breaches of the same or other (similar or otherwise) obligations of such other party hereunder or as a waiver of any remedy. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable law.
- 16.5 Severability: In case of one or more of the provisions contained in these Terms and Conditions shall for any reason be held invalid, illegal or unenforceable in any respect, such holding shall be construed by limiting such provision to such extent as would nearly be possible to reflect the intent, purpose and economic effect of such, or, if such is not possible, by deleting such provisions from these Terms and Conditions.



BMPA Carton Forum Standard Terms and Conditions of Sale and Purchase
Privileged and Confidential

- 16.6 **Terms of the Industry:** Both the parties acknowledge that these Terms and Conditions set out the terms of the packaging and printed carton industry, which, together with the Purchase Orders, constitutes the entire agreement between the parties and supersedes all previous negotiations and arrangements between the parties with respect to the subject matter hereof.
- 16.7 **Inconsistency:** In the event of any conflict or inconsistency between the terms of these Terms and Conditions and the provisions of any Purchase Order, or other document between the parties, the provisions of these Terms and Conditions shall prevail in relation to the matters set out herein.
- 16.8 **Non-Exclusivity:** The parties agree that the manufacture and sale of the products by the Vendor to the Buyer and the purchase of the products by the Buyer from the Vendor, under these Terms and Conditions, is on a non-exclusive basis, and that these Terms and Conditions do not preclude either party from buying or selling, as the case may be, or entering into an agreement, arrangement or other understanding in relation to such buying or selling, as the case may be, with any third party or competitor of the other party.
- 16.9 **No Partnership; No Agency:** These Terms and Conditions are on a principal-to-principal basis. Neither party is an agent of the other. The parties expressly do not intend hereby to form a partnership, either general or limited, or a joint venture, under applicable law. The parties do not intend to be partners to one another, or partners as to any third party, or create any fiduciary relationship among themselves.
- 16.10 **Further Action:** Each party agrees to perform (or procure the performance of) all further acts and things (including the execution and delivery of, or procuring the execution and delivery of, all deeds and documents that may be required by applicable law or as may be necessary, required or advisable, procuring the convening of all meetings, the giving of all necessary waivers and consents and the passing of all resolutions and otherwise exercising all powers and rights available to them) as the other party may reasonably require to effectively carry on the full intent and meaning of these Terms and Conditions and to complete the transactions contemplated hereunder.
- 16.11 **Time:** Any date or period as set out in any Clause of these Terms and Conditions may be extended with the written consent of the parties, failing which time shall be of the essence.
- 16.12 **Independent Rights:** Each of the rights of the parties are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of the party, whether under these Terms and Conditions or otherwise. The rights and remedies of any party based upon, arising out of or otherwise in respect of any inaccuracy or breach of any representation, warranty, covenant or agreement or failure to fulfill any condition shall in no way be limited by the fact that the act, omission, occurrence or other state of facts upon which any claim of any such inaccuracy or breach is based may also be the subject matter of any other representation, warranty, covenant or agreement as to which there is no inaccuracy or breach.
- 16.13 **Rights of Third Parties:** Nothing expressed or implied in these Terms and Conditions is intended or shall be construed to confer upon or give any person, other than the parties hereto any rights or remedies under or by reason of these Terms and Conditions or any transaction contemplated by these Terms and Conditions.
-