

# CONDITIONS OF SALE

## Version October 2012



The Buyer's attention is in particular drawn to the provisions of Conditions 9 and 13.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these Conditions:

**'Buyer'** means the person, firm or company who purchases the Goods from the Seller;

**'Goods'** means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply to the Buyer in accordance with these Conditions;

**'Seller'** means HS Butyl Limited of Gordleton Industrial Estate, Hannah Way, Sway Road, Lymington, Hampshire, SO41 8JD (Company registration number 07841815);

**'Conditions'** means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions of sale agreed in Writing between the Buyer and the Seller;

**'Contract'** means any contract between the Buyer and the Seller for the purchase and sale of the Goods, incorporating these Conditions;

**'Writing'** means in written form and includes, without limitation, electronic transmission, facsimile transmission and all comparable means of communication;

**'Incoterms'** means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010 as is in force at the date when the Contract is made;

**'Insolvency Event'** means each and any of the following in relation to a party:

- (a) any action, legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation to or with a view to:
  - (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of a party;
  - (ii) a Debt Relief Order being made in respect of a party;
  - (iii) the appointment of a liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of a party or any of its assets;
  - (iv) the enforcement of any security over any assets of a party; or
  - (v) the attachment, sequestration, distraining upon or execution over or affecting any material asset of a party,

- (b) the party is unable to pay its debts as they fall due or is insolvent;
- (c) the party enters into a composition or arrangement with its creditors or any class of them;
- (d) the party ceases to carry on its business or substantially all of its business, or is struck off and/or dissolved; or
- (e) the commencement of any analogous procedure or step in relation to such party in any jurisdiction other than England and Wales;

**'Intellectual Property'** means any patent, copyright, database right, moral right, design right, registered design, trade mark, service mark, domain name, know-how, utility model, unregistered design or, where relevant, any application for any such right or other industrial or intellectual property right subsisting in any part of the world; and

**'Losses'** means any loss, damage, liability, expense, costs (including the cost of any labour and materials used), demand, claim, recovery, judgment, execution, penalty, charge and any other cost and expense of any nature or kind whatsoever (including any legal costs and expenses and costs of recovery on a full indemnity basis).

1.2 Any reference in these Conditions to any provision of a statute or a particular law shall be construed as a reference to that provision or particular law as it is in force at the time being taking account of any amendment, re-enactment, extension or application at the relevant time and includes any subordinate legislation for the time being in force made under it.

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

1.4 Words in the singular include the plural and in the plural include the singular.

1.5 A reference to one gender includes reference to the other gender.

1.6 References to "includes" or "including" shall be construed without limitation.

### 2. BASIS OF THE SALE

2.1 Subject to any variation made under condition 2.3, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply to any purchase order, confirmation of order, specification or other document).

2.2 No terms and conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of

HS Butyl Ltd, Gordleton Industrial Park, Hannah Way, Sway Road, Lymington, SO41 8JD.  
T : +44 (0)1590 684400, F : +44 (0)1590 683728, E : [sales@hsbutyl.com](mailto:sales@hsbutyl.com), W : [www.hsbutyl.com](http://www.hsbutyl.com)

Registered in England Number 7841815. VAT reg GB 130 3623 59.  
Registered office : Gordleton Industrial Park, Hannah Way, Sway Road, Lymington, SO41 8JD.

- the Contract as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Seller's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.4 The Contract constitutes the entire agreement between the parties relating to its subject matter, and supersedes all representations, including all pre-contract misrepresentations and misstatements negligently or innocently made, agreements, negotiations or understandings between the parties. The Buyer acknowledges that it has not relied on any statement, warranty, understanding, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. Nothing in this condition shall exclude or limit either party's liability for fraud or fraudulent misrepresentation.
- 2.5 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's order.
- 2.6 Any quotation is valid for a period of 3 months only from its date, provided that the Seller has not previously withdrawn it.
- 2.7 Each order or acceptance of quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.
- 2.8 The Buyer shall ensure that the terms of its order and any applicable specifications are complete and accurate.
- 2.9 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.
- 2.10 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions, illustrations and prices contained in the Seller's catalogues, price lists and other brochures or advertising materials are intended to present a general and approximate idea of the Goods described in them and shall not form part of the Contract nor is this a sale by sample. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.11 Any typographical, clerical or other error or omission in any sales and advertising literature, quotation, price list, acceptance of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.12 Without prejudice to the generality of the foregoing, information, documentation or literature issued by the Seller without a document identification number or marked 'uncontrolled' shall not form part of the Contract between the Buyer and the Seller.
- ### 3. QUANTITY
- 3.1 Subject to condition 3.2 and 3.3 the quantity of the Goods shall be set out in the Seller's quotation or the Buyer's order provided that such order has been accepted by the Seller.
- 3.2 Due to the nature of the Goods to be provided the Buyer acknowledges that it may be necessary for the Seller to round up or round down the quantity of Goods to be supplied in order to comply with the Seller's box quantities and therefore the Seller may, at its option, round up or round down, by a reasonable amount, the quantity of Goods to be supplied in order to comply with the Seller's box quantities. Any such change in quantity will be notified to the Buyer in the Seller's acknowledgement of order.
- 3.3 If the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Seller, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for any such Goods at the pro rata Contract rate.
- ### 4. PRICE OF THE GOODS
- 4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acknowledgement of order.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on the basis of delivery being Ex-Works the Seller's place of business (Incoterms).

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller upon payment becoming due.

4.6 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned in an undamaged and good condition to the Seller before the due payment date.

4.7 No discounts in the price payable for the Goods are applicable unless the Seller has notified the Buyer in Writing prior to the date of invoice that the Buyer is entitled to a discounted price.

## 5. TERMS OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the price for the Goods shall be due in the currency specified in the quotation or, if no currency is specified, pounds sterling 30 days following the date on the invoice.

5.2 The time for payment of the price shall be of the essence of the Contract and no payment shall be deemed to have been received until the Seller has received cleared funds. Receipt for payment will be issued only upon request.

5.3 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.

5.4 The Buyer shall make all payments under the Contract in full and without any deduction whether by way of set-off, counterclaims, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

5.5 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.5.1 terminate the Contract or suspend any further deliveries to the Buyer;

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

5.5.3 claim interest under the Late Payment of Commercial Debts Act 1998.

## 6. DELIVERY

6.1 Where delivery is to take place at the Seller's place of business, the Buyer shall take delivery of the Goods within 3 days of the Seller giving the Buyer notice that the Goods are ready. Otherwise, the Buyer shall take delivery of the Goods immediately upon delivery of such Goods to the Buyer's place of business.

6.2 Any dates quoted by the Seller for delivery of the Goods are approximate only and shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

6.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);

6.4.2 the Goods shall be deemed to have been delivered; and

6.4.3 the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.5 The Buyer shall provide at the place of delivery and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.

6.6 The quantity of any consignment of Goods as recorded by the Seller upon dispatch from the Buyer's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6.7 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives notice to the Seller of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been received.

6.8 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

## 7. RISK AND TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until the Seller 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 the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods as the Seller's fiduciary bailee;
- 7.3.2 properly store (at no cost to the Seller) the Goods separately from all other goods of the Buyer or any third party and in such a way that they remain readily identifiable as the Seller's property;
- 7.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in a satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- 7.3.5 hold the proceeds of insurance referred to in condition 7.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn account.
- 7.4 The Buyer may resell, use, incorporate or attach the Goods before ownership has passed to it solely on the following conditions:
- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer experiences an Insolvency Event.
- 7.6 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), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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.
- 7.7 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 the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.8 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.9 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 7.10 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.
- 8. WARRANTIES**
- 8.1 Subject to the conditions set out below the Seller warrants that upon delivery, and for a period of 12 months from the date of delivery, the Goods shall comply with the Seller's specification for those Goods, which is available from the Seller on request.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Buyer shall be responsible for ensuring that the Goods are fit for the purpose for which it wishes to use them and the Seller gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose;
- 8.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- 8.2.3 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing) as to storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice, misuse or alteration or repair of the Goods without the Seller's consent in Writing;
- 8.2.4 the Seller shall be under no liability under the above warranty (or any other warranty, conditions or guarantee) if the total price for the Goods has not been paid; and
- 8.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, 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 the Seller.
- 8.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
- 8.4 The Buyer shall test and inspect the Goods on receipt. The Seller shall have no liability for any claim in respect



of any defect in the Goods which would be apparent on inspection or testing.

8.5 The Buyer shall accept all of the Goods which meet the requirements of condition 8.1 in all material respects. The Buyer shall not reject any Goods where any breach of condition 8.1 is minor or trivial.

8.6 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 (whether or not delivery is refused by the Buyer) be notified to the Seller within 28 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 28 days from the date of discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the specification is notified to the Seller in accordance with these Conditions, the Seller shall at its option repair or replace the Goods (or the defective part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) provided that the Buyer shall, at the Seller's expense, return the Goods or the part of such Goods which is defective to the Seller.

8.8 If the Seller complies with condition 8.7 it shall have no further liability for a breach of the warranty in condition 8.1 in respect of such Goods.

8.9 If the Seller agrees, at its sole option, to the return of the Goods or any part of the Goods by the Buyer in circumstances where there is no significant defect in the quality or condition of the Goods the Seller reserves the right to charge a handling fee of 20% of the cost of the returned Goods (unless otherwise agreed in Writing by the Seller) to the Buyer and the Buyer agrees to pay such handling fee in these circumstances.

8.10 The Seller reserves the right to set-off any amount owed to the Buyer in payment for Goods returned pursuant to condition 8.9 against any sums owed to the Seller by the Buyer.

## 9. LIMITATION OF LIABILITY

9.1 Subject to the other provisions of these Conditions, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

9.1.1 any breach of these Conditions;

9.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

9.1.3 any representation, statement, breach of statutory duty or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions excludes or limits the liability of the Seller:

9.3.1 for death or personal injury caused by the Buyer's negligence; or

9.3.2 under section 2(3), Consumer Protection Act 1987; or

9.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

9.3.4 for fraud or fraudulent misrepresentation.

9.4 Subject to conditions 9.2 and 9.3:

9.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a sum equal to five times the price of the Goods to which the claim relates; and

9.4.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or for any indirect or consequential loss whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 10. ASSIGNMENT

10.1 The Seller may assign the Contract or any part of it to any person, firm or company.

10.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior consent in Writing of the Seller.

## 11. FORCE MAJEURE

11.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil

commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), breakdown of plant or machinery, failure of supply of utilities, restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

## **12. INTELLECTUAL PROPERTY**

12.1 All Intellectual Property in relation to the Goods, and information which the Seller may provide to the Buyer or its agents in relation to the Goods, shall (as between the parties) at all times remain vested in the Seller.

## **13. INDEMNITY AND RELEASE OF LIABILITY**

13.1 The Buyer acknowledges that the Seller places particular reliance upon the provisions of this Contract and in addition to any other remedy available to the Seller, the Buyer irrevocably and unconditionally agrees to indemnify the Seller in full and on demand and hold harmless and keep the Seller so indemnified from and against all Losses including all economic loss whether direct or indirect (including loss of profit and loss of anticipated savings) which are made or brought against or incurred or suffered by the Seller, its officers, employees, representatives, agents or subcontractors directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such Losses or consequences of the matters listed below were foreseeable at the date of the entering into this Contract:

13.1.1 the manufacture and sale of the Goods by the Seller in accordance with the Buyer's designs, drawings, specifications or other data or information furnished or instructions given by the Buyer;

13.1.2 the cancellation of any order by the Buyer after its acceptance by the Seller in accordance with condition 2.9;

13.1.3 any claims that any Intellectual Property or other exclusive right of any third party has been infringed through the manufacture, sale or use of the Goods in accordance with the instructions, designs, drawings or specifications or other information or data of the Buyer (save to the extent the same have been supplied in accordance with specifications or designs of the Seller); or

13.1.4 any breach by the Buyer of its obligations under the Contract.

13.2 The Seller is discharged from performing the Agreement where, and to the extent, and for so long as the following circumstances affect performance:

13.2.1 the Seller has been provided with inaccurate, incomplete or misleading information; or

13.2. the Buyer is in breach of the Contract.

## **14. BREACH OF CONTRACT/INSOLVENCY**

14.1 The Seller shall have the right at any time and for any reason to immediately terminate the Contract in whole or in part by giving the Buyer written notice, whereupon all work on the Contract shall be discontinued without liability to the Seller, if:

14.1.1 the Buyer commits a material breach of any of the terms and conditions of the Contract; or

14.1.2 the Buyer experiences an Insolvency Event.

14.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the parties accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **15. EXPORT CONDITIONS**

15.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 15 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions and delivery shall be Ex Works (Incoterms) Seller's place of business or such other location as agreed between the parties unless otherwise agreed in Writing between the Buyer and the Seller.

15.2 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, these Conditions shall prevail.

15.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation, use or sale of the Goods into the country of destination and for the payment of any duties or taxes thereon, the transportation and storage of Goods including without limitation any obligation to translate any instructions, labelling or packaging into any other language.

15.4 The Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

15.6 Payment of all amounts due to the Seller shall be made by whichever method the Seller specifies to the Buyer, which may be by irrevocable letter of credit, bill of exchange or otherwise at the discretion of the Seller.

## **16. GENERAL**

16.1 Each right or remedy of the Seller under the Contract is cumulative and without prejudice to any other right or remedy of the Seller whether under Contract or not.

- 16.2 No waiver by the Seller or 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. The failure to exercise or delay in exercising a right or remedy under the Contract shall not constitute a waiver of the right or remedy.
- 16.3 If any provision of the Contract is found by any Court, tribunal or administrative body of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 17. COMMUNICATIONS**
- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic mail:
- 17.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller or in the case of faxes or electronic mail to the fax number or electronic mail address notified to the Buyer by the Seller from time to time; or
- 17.1.2 (in the case of communications to the Buyer) to the registered office of the addressee or to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Buyer or in the case of faxes or electronic mail to the fax number or electronic mail address notified to the Seller by the Buyer from time to time.
- 17.2 Communications shall be deemed to have been received:
- 17.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 17.2.2 if delivered by hand, on the day of delivery; or
- 17.2.3 if sent by fax or electronic mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 17.3 Communications addressed to the Seller shall be marked for the attention of the Managing Director.

Gordleton Industrial Estate  
Hannah Way  
Sway Road  
Lymington  
SO41 8JD  
United Kingdom

T: +44 (0) 1590 684400  
F: +44 (0) 1590 683728  
sales@hsbutyl.com  
www.hsbutyl.com