



# Union Technology International

(Macao Commercial Offshore) Co Ltd

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## TERMS AND CONDITIONS OF EXPORT SALE

(version 5)

EFFECTIVE: 10 August, 2009

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 In these Conditions:

"Buyer" means the person who or the firm or company which has agreed to buy the Goods from the Seller;

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any amendments or additional terms and conditions duly agreed in writing between the Seller and the Buyer;

"Contract" means the contract of the sale and supply of the Goods in accordance with these Conditions;

"Goods" means the Goods (including any instalment or part of the Goods) agreed to be sold by the Seller to the Buyer and agreed to be purchased by the Buyer from the Seller;

"Price" means the price of the Goods, including, where applicable, additional packaging, transportation and legal compliance costs;

"Seller" means Union Technology International (Macao Commercial Offshore) Co Ltd;

"Specification" includes any plans, drawings, data, chemical formula or process or other technical requirements or information relating to the Goods or specified by the Buyer, whether or not designed by the Seller in accordance with the Buyer's instructions.

### 2. APPLICATION OF CONDITIONS

2.1 These Conditions apply to all Contracts for sale of Goods by the Seller.

2.2 Amendments to these Conditions may only be binding and take effect upon clear agreement in writing between the Buyer and the Seller through their duly authorised representations.



2.3 Unless the context otherwise requires, the provisions of the Incoterms 2000, being the International Commercial Terms published by the International Chamber of Commerce to take effect from 1<sup>st</sup> January 2000, apply to these Conditions. However, in the event of conflict between the Incoterms 2000 and these Conditions, these Conditions will prevail.

### 3. SPECIFICATIONS OF GOODS

3.1 The Buyer shall be solely responsible for the accuracy, completeness and timing of the terms of its orders, Specifications and instructions to the Seller relating to the Goods. The Buyer acknowledges that the advice and recommendations of the Seller, if any, are dependent upon the information and technical background given to the Seller by the Buyer.

3.2 All drawings, illustrations or any product literature or other publications of the Seller in relation to the Goods are approximations only and the Buyer acknowledges that it has verified the accuracy and suitability of those materials.

3.3 Save specified otherwise, all Specifications and the intellectual properties thereof are the exclusive properties of the Seller. The Buyer must not disclose to any third party or use any such Specification except to its agents and services to the extent necessary for the purpose of the Contract or to enable such agents and services to recognize and observe the property of the Seller on the Specifications and their intellectual properties. The Buyer will, on demand by the Seller, return to the Seller all documents, drawings and other data records of the Specification and all copies thereof.

3.4 The Buyer warrants that the Specifications do not and will not violate any proprietary interest or intellectual property rights of any third party and indemnifies the Seller against all claims, loss, damages, costs and expenses awarded against or incurred by the Seller in connection with any claim for infringement of any proprietary interest or intellectual property rights of any other person which may arise or arising from the Seller's use of the Specification.

3.5 The Seller has the right to change the Specification of the Goods which, in the opinion of the Seller, are required to conform with any statutory or other regulatory requirements applicable to the Goods and/or the manner in which the Contract is to be lawfully performed.

3.6 If the Goods are not covered by any Specifications, the Seller may from time to time make changes in the composition, configuration and other characteristics of the Goods in order to comply with any applicable safety or statutory requirements or the Seller's change of design.

#### 4. PRICE OF THE GOODS

- 4.1 The Seller reserves the right, on notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to the Seller which is due to any acts of God, riots, civil commotions, insurrections, wars, or by any strikes and other factors beyond the control of the Seller (“Force Majeure”), changes in the costs of raw materials or component parts, any change in delivery dates, quantities or the Specifications which is requested by the Buyer, or any delay caused by any instructions or conduct of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 4.2 The Buyer is solely responsible for the due compliance with all statutes, regulations, guidelines and practices governing the importation of the Goods into and the dealing of the Goods in the country of destination, including but not limited to the payment of all levies, duties and taxes on the Goods.
- 4.3 Value added tax is not included in the Price and is to be borne and paid for by the Buyer. The Buyer shall indemnify and reimburse the Seller for all value added tax payable by the Seller in the course of supplying the Goods to the Buyer.
- 4.4 Due date for payment is stated on the proforma invoice. If it is not stated on the proforma invoice, all payments are due within 30 days of the issuance of the invoice. Default interest on each overdue payment to the Seller is payable by the Buyer to the Seller from the due date to the date of full and complete payment at the rate of 2% per month, before and after judgment.

#### 5. DELIVERY

- 5.1 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex works and the Seller shall be under no obligation to give notice under section 34(3) of the Sale of Goods Ordinance (Cap. 26), Laws of Hong Kong. The Buyer solely assumes the risk of the Goods during transit and is solely responsible for arranging to insure against such risk.
- 5.2 In the case of sales made F.C.A., F.A.S., or F.O.B. unless otherwise agreed the Buyer shall, not less than 14 days before the date of delivery, nominate a carrier or vessel willing to receive the Goods from the location of delivery designated by the Seller.
- 5.3 Unless otherwise agreed in writing in the case of sales made C.I.F., C.I.P., D.D.U. or D.D.P. the Buyer will effect marine insurance for the Goods on the terms of the current Institute Cargo Clause A and may, but is not obliged to, effect war risks insurance.



- 5.4 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 5.5 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any early or late delivery of the Goods howsoever caused.
- 5.6 Where the Goods are to be delivered by 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.
- 5.7 Failure to pay in full the Price for any Goods or for any delivery shall entitle Seller at its sole discretion to suspend, withhold, or recall any further deliveries or shipments, and/or suspend any work under any Contract or order from Buyer, until payment in full is made. Seller may take possession of any deposits or other amounts from Buyer regarding any further deliveries and shipments, and Seller may apply those deposits or other amounts to the Price until it is paid in full. The Seller specifically reserves the right to withhold transport documents, including bills of lading, on any shipment or delivery in the event the Buyer has failed to pay in full the Price of any previous shipment or delivery, without prejudice to any other legal right Seller may have, including the right to claim the costs and expenses related to suspending, withholding, recalling or resuming deliveries and/or work under any Contract.
- 5.8 If the Buyer is in default and has not paid in full the Price of a previous shipment or delivery and the Seller exercises its right to suspend, withhold, or recall any further deliveries or shipments until payment in full is made, the Seller may either (i) store the Goods until actual delivery at the Buyer's expense, including storage and insurance costs, or (ii) sell the Goods to a third party and recover from the Buyer the difference between the Price agreed with the third party and the Price agreed with the Buyer if the Goods are sold at a lower Price to the third party.
- 5.9 If the Seller has reasonable and good faith grounds to believe that the Buyer may be insolvent, in risk of insolvency, or otherwise unable to pay the price in full of any shipment or delivery, the Seller at its own discretion may suspend, withhold, or recall any further deliveries or shipments, including withholding delivery of bills of lading, until payment in full is made.
- 5.10 If the Seller fails to deliver the Goods (or any instalment) the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.



- 5.11 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 5.11.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 5.11.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.
- 5.12 Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and the Seller shall not be liable for any changes to the charges quoted however caused.
- 5.13 The Buyer shall take delivery of each quantity of the Goods delivered by the Seller notwithstanding any discrepancy in such quantity or the timing of such delivery with that agreed Provided that:
- 5.13.1 such discrepancy in quantity shall not exceed 5%;
- 5.13.2 the Price shall be adjusted pro rata to reflect the discrepancy; and
- 5.13.3 the delivery is made within 3 months before or after the delivery date agreed.
- 5.14 The Buyer shall give notice to the Seller of any discrepancy in the quantity of a delivery of Goods with that agreed as soon as practicable and in any event within 40 days after the delivery (as stated on the invoice). Notwithstanding the receipt by the Seller of any such notice, the relevant carrier's delivery advice sheet or receipt of the delivery of Goods shall be evidence of the quantity of the delivery of the Goods.

## 6. RISK AND PROPERTY

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 6.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 6.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, 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.

- 6.2 Buyer shall pay in full the Price for all Goods on or before the date specified on the invoice or, if no date is specified, then within 30 days of the date of the invoice. The property 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 and all other Goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 6.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall properly store the Goods in a location which is separate from those of the Buyer and third parties in order that the Goods may be readily identified and traced as the Seller's property.
- 6.4 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. A certificate signed by an officer of the Seller as to the title to the Goods shall, save for manifest errors, constitute conclusive evidence of the title of the Seller to the Goods.

## 7. WARRANTIES

- 7.1 If the Goods are produced under Specification, subject to clauses 7 and 8 the Seller warrants that the Goods will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from delivery or such other warranty period specifically agreed between the parties in writing.
- 7.2 The warranty referred to in clause 7.1 is given by the Seller subject to the following:
- 7.2.1 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.
- 7.2.2 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), misuse or alteration or repair of the Goods without the Seller's written approval.
- 7.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price has not been paid by the due date for payment.
- 7.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller. For parts, materials or equipment not manufactured by the Seller, the

Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

- 7.3 The Seller will not be liable for any loss whether direct or indirect or consequential or loss of profit or any damage as a result of:
- 7.3.1 any inaccurate or insufficient information or technical background given to the Seller;
  - 7.3.2 any failure to comply strictly with the instructions, advice or recommendations given to the Buyer by the Seller;
  - 7.3.3 any use or application of the Goods for any purpose other than those detailed in the Specification or advised by the Seller; and
  - 7.3.4 any failure to comply with any applicable legislation or any guidelines issued by the appropriate regulatory authority concerning the use of the Goods.
- 7.4 Any parameters given in respect of the performance of the Goods are based on the design parameters set out in the Specification and the Seller will not be liable for any failure of the Goods to achieve these parameters unless the operating conditions for the Goods are the same as set out in the Specification and where applicable all chemical regenerants must be commercially pure.
- 7.5 Where the Goods are defective in any way or fail to correspond with the Specification, the Buyer must notify the Seller of the defects with an indication as to rejection of the relevant Goods within 7 days from the date of delivery, otherwise the Buyer will be deemed to accept the Goods conclusively and will have to promptly pay for the Price in full and will not be entitled to reject the Goods or make any claim against the Seller for compensation on any ground whatsoever.
- 7.6 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 Specification is notified to the Seller in accordance with these Conditions and provided the Goods are returned to the Seller's premises carriage paid, the Seller will at its option either replace the Goods (or the part in question) free of charge or refund to the Buyer the Price of the Goods (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.
- 7.7 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for

compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY CONTRACT, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, TO BUYER OR ANY THIRD PARTY AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.

7.8 With the exception of the warranties and Conditions set forth herein, all other warranties and conditions are excluded, whether implied by statute or otherwise provided that nothing in this Contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a buyer dealing as consumer.

7.9 All terms, conditions and warranties (whether implied or made expressly) whether by the Seller or its servants or agents or otherwise (other than those express warranties set out in the current edition of the Seller's Specification) relating to the quality and/or fitness for purpose of the Goods or any of the Goods are withdrawn.

## 8. HIREWORK

8.1 Hirework and work involving the use of Buyer's materials shall be undertaken by the Seller only on the express understanding that the Seller shall not be responsible for any distortion, faults or defects which appear or develop during, or are caused by, the work, even if resulting from the negligence of the Seller or its employees. Subject to the availability of capacity and facilities, the Seller will use commercially reasonable efforts to correct any such distortion, faults or defects at the Buyer's sole expense and risk. The Seller shall not in any circumstances be liable for any losses arising from hirework, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law. All waste material resulting from the performance of any hirework shall become the property of the Seller. The Buyer agrees to remove any such waste material promptly upon the Seller's request. The Buyer agrees that it will reimburse the Seller for any damage caused to any plant or machinery of the Seller by the material supplied by the Buyer to the Seller.

## 9. NON-STANDARD ORDERS

9.1 In the event the Buyer orders Goods or materials of a type, size or quality not normally produced by the Seller, the Seller shall use commercially reasonable efforts to execute the order; provided, however, that the Seller reserves the right to cancel such Contract or

the uncompleted balance thereof, if, in the sole discretion of the Seller, it proves impossible, impracticable or uneconomical to complete such order, and in such case, the Buyer will only be liable to pay for the part thereof actually delivered by the Seller.

## **10. OWNERSHIP OF MATERIALS AND SPECIFICATIONS**

10.1 All patterns, dies, tools, drawings or equipment supplied by the Buyer for the Seller's use ("Buyer Materials") shall be assumed to be in good condition, true to drawings and entirely suitable to the Seller's methods of production, and for the production of the Goods ordered in the quantities required. The Seller accepts no responsibility for the accuracy of any Buyer Materials. All replacements, alterations and repairs to Buyer Materials shall be paid for the Buyer. Any patterns, dies, tools, drawings and equipment which are specially made by the Seller and separately charged to the Buyer shall become the property of the Buyer upon the Seller's receipt of payment therefore. The Seller will take reasonable care of all Buyer Materials while in the Seller's possession but shall not be liable for any loss or damage thereto, except to the extent that the gross negligence of the Seller or its employees is determined to be the direct cause of such loss or damage. In such event, the Seller's liability shall be limited solely to the actual cost of replacement or repair of the items at issue. The Seller reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not Buyer's property) from which the Buyer has not required Goods to be made for a period of at least 12 months in the case of patterns, and at least 3 years all other cases. The parties hereto agree that the Seller shall at all times retain ownership of all methods of manufacturing the Goods hereunder, regardless of the Seller's use of any Specifications provided by the Buyer or any other Buyer Materials during such manufacture.

## **11. BUYERS INDEMNITY**

11.1 The Buyer shall indemnify the Seller and keep it indemnified at all times against all injury (including death) to any persons and all loss and/or damage as a result of any act, default or negligence by the Buyer and its employees or agents (other than the Seller or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

## **12. INSOLVENCY OF BUYER**

12.1 If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or the Seller reasonably apprehends that any of the events mentioned above is about to occur then the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any

previous agreement or arrangement to the contrary and without prejudice to the right of the Seller to recover the Goods from the Buyer.

### 13. GENERAL

- 13.1 No Goods delivered to the Buyer which are in accordance with the Contract will be accepted for return without the prior written approval of the Seller and the Seller has the absolute discretion to withhold or refuse to grant such approval or to grant such approval on any Conditions. If the Seller agrees to accept any such Goods for return the Buyer shall be liable to pay a handling charge as reasonably determined by the Seller. Such Goods must be returned by the Buyer carriage paid to the Seller in their original shipping carton.
- 13.2 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any other rights or remedies the Seller may have. In any event, the Price for such Goods shall remain payable by the Buyer in full until such time and except to the extent of the Seller's acceptance of the Goods returned.
- 13.3 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed an amount equal to the Price and the Seller shall be under no liability whatsoever for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 13.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 13.5 All Goods sold in retail packaging may be resold by the Buyer only in the intact packaging supplied by the Seller and in no case may any trademark other than those applied by the Seller be marked on or applied in relation to the Goods.
- 13.6 No right or licence is granted under the Contract to the Buyer under any patent, trademark, copyright, registered design or other intellectual property right except the right to use or resell the Goods.
- 13.7 The Seller may, by written notice to the Buyer, cancel the Contract at any time before the Goods are delivered. On giving such written notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price but shall not be liable for any loss or damage whatever arising from such cancellation.

- 13.8 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice so given shall be deemed to be effective:
- 13.8.1 on personal delivery, at the time of delivery;
- 13.8.2 by post if made to an address in the same country as the party giving the notice, 48 hours from posting; and
- 13.8.3 by airmail to an address in a country different from that of the party giving the notice, 7 days from posting.
- 13.9 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.10 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 13.11 The Contract and its performance shall be governed by the laws of Hong Kong, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Hong Kong.
- 13.12 Any dispute, controversy or claim arising out of or relating to the Contract, including the validity, invalidity, breach of termination thereof, shall be settled by arbitration in Hong Kong under the administration of the Hong Kong International Arbitration Centre under the rules and regulations in force at the time of the Notice of Arbitration, including, where applicable, the Hong Kong International Arbitration Centre Administered Arbitration Rules.
- 13.13 EACH BUYER AND SELLER HEREBY SUBMITS TO THE JURISDICTION OF HONG KONG IN ANY CLAIM, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CONTRACT, GOODS, OR THESE CONDITIONS, AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN HONG KONG, WAIVES ANY CLAIM OF INCONVENIENT FORUM OR OTHER CHALLENGE TO VENUE, AND AGREES NOT TO BRING ANY CLAIM, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO RELATING TO THE CONTRACT, THE GOODS, OR THESE CONDITIONS IN ANY JURISDICTION EXCEPT IN HONG KONG.
- 13.14 These Conditions, together with the applicable Contract, constitute the entire understanding between the parties with respect to the subject matter thereof, superseding



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(Macao Commercial Offshore) Co Ltd

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all negotiations, prior discussions and preliminary agreements, if any. If any term of these Conditions, or the application thereof to any person or circumstance, shall be invalid or unenforceable, the remainder of these Conditions or the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term hereof shall be valid and enforceable to the fullest extent permitted by applicable law.