

ITC Model

Agreement for Long Term Supply of Goods

Draft

ITC MODEL AGREEMENT FOR LONG TERM SUPPLY OF GOODS

1. PARTIES

SUPPLIER

Name (name of company)_____

Legal form (e.g. limited liability company)_____

Country of incorporation, trade register number _____

Address (address of place of business of the Seller, phone, fax, e-mail)_____

Represented by (surname and first name, address, position, legal title of representation)_____

CUSTOMER

Name (name of company)_____

Legal form (e.g. limited liability company)_____

Country of incorporation, trade register number _____

Address (address of place of business of the Buyer, phone, fax, e-mail)_____

Represented by (surname and first name, address, position, legal title of representation)_____

collectively "the Parties"

Draft

BACKGROUND

A The Supplier carries on business in the manufacture of *[specify goods]*.

B The Customer wishes to purchase certain of the goods manufactured by the Supplier, details of which are set out in Schedule 1 (the "Goods") and the Customer is willing to supply such Goods to the Customer, on the terms of this Contract.

OPERATIVE PROVISIONS

1. SUPPLY OF THE GOODS

1.1 The Supplier shall sell and the Customer shall purchase the quantities of the Goods ordered by the Customer, subject to the terms of this Contract.

1.2 In each year during the duration of this Contract (the "Term") the Customer shall purchase from the Supplier not less than the minimum quantity of the Goods specified in Schedule 2 (unless the Supplier is prevented by Force Majeure or otherwise from supplying the Customer with that quantity).

Alternative: In each year during the duration of this Contract (the "Term") the Customer shall place orders with the Supplier for not less than [•] per cent of the Customer's requirements of the Goods (or any other goods of the same description) calculated by reference to the total quantities of the Goods (and any other goods of the same description) of which the Customer takes delivery from any person in that year or which are manufactured by the Customer in that year.

1.3 Subject to article 1.2, the quantity of the Goods to be supplied by the Supplier shall be as set out in each order submitted by the Customer (if confirmed by the Supplier).

1.4 The specification of the Goods shall be as set out in Schedule 1, but the Supplier reserves the right to make any change in the specification of the Goods which is necessary in order for them to conform with any applicable laws or which do not materially affect their quality or performance.

1.5 The Supplier shall provide the Customer with any instructions concerning the use of the Goods which are reasonably required or which the Supplier may reasonably specify, in which case the Customer undertakes to comply with those instructions.

1.6 Subject to the provisions of this Contract, the supply of the Goods shall be made on the terms of the Supplier's standard contract for the international commercial sale of goods. In the event of any conflict between those terms and the terms of this Contract, that terms of this Contract shall prevail.

1.7 The Supplier may alter the terms of its standard contract for the international sale of goods by giving [*specify period*] written notice to the Customer.

2. PROCEDURE FOR ORDERING THE GOODS

2.1 The Customer shall, not less than [fifteen (15) - *specify any other period*] days before the beginning of each [month - *specify any other period*], give the Supplier its written order for the Goods to be delivered to the Customer during that [month – or other period].

2.2 Each order for the Goods must be given in writing and shall be subject to confirmation in writing by the Supplier; upon confirmation by the Supplier each order shall be final, but the Supplier may at its discretion accept an amendment to an order within [fifteen (15) days - *specify any other period*] after it is given.

2.3 Each order for the Goods shall upon confirmation by the Supplier be deemed to constitute a separate contract, and accordingly any breach by the Supplier in relation to any one order shall not entitle the Customer to terminate this Contract as a whole.

2.4 The Customer shall notify the Supplier in writing of:

2.4.1 its estimated orders for the Goods for each year [*specify any other period*] during the Term, within [*specify period*] months prior to that year or other period]; and

2.4.2 any revisions to those estimates, as soon as practicable after they are made.

2.5 The Customer shall be responsible to the Supplier for:

2.5.1 ensuring the accuracy of any order for the Goods given by the Customer;

2.5.2 giving the Supplier all necessary information relating to the Goods within sufficient time to enable the Supplier to fulfil each order in accordance with its terms; and

2.5.3 obtaining any necessary import licences, certificates of origin or other requisite documents, and otherwise complying with any applicable laws or regulations concerning the importation of the Goods, and for paying all applicable customs duties, taxes and charges in respect of the importation of the Goods and their resale.

2.6 Upon confirmation of each order the Supplier shall as soon as is practicable inform the Customer of the Supplier's estimated delivery date for the Goods.

2.7 The Supplier shall use its reasonable commercial endeavours to meet the delivery date for each order, but (without limiting article [8 or] 9) the Supplier shall not be in breach of this Contract or have any liability to the Customer if, despite those endeavours, there is any delay in delivery[, unless the Customer has given [fifteen (15) - *specify any other period*] days' notice to the Supplier requiring delivery to be made and the Supplier has not made the delivery within that period – *delete if not applicable*].

2.8 The Supplier shall use its reasonable commercial endeavours to manufacture and maintain sufficient stocks of the Goods to fulfil its obligations under this Contract, but (without limiting article [8 or] 9) the Customer shall not have any priority of supply over other customers of the Supplier in relation to the Goods.

2.9 The Supplier may [after consultation with the Customer – *delete if not applicable*] discontinue the manufacture of all or any of the Goods.

2.9.1 If the Customer's orders for the Goods exceed (or it appears from any estimate or revised estimate given by the Customer that they will exceed) the output capacity or available stocks of the Supplier:

2.9.2 the Supplier shall as soon as practicable notify the Customer;

2.9.3 the Customer shall be entitled to obtain from any other person such quantity of the Goods as the Supplier is unable to supply in accordance with the Customer's orders; and

2.9.4 that quantity shall be deemed for the purposes only of article 1.2 to have been ordered from the Supplier, until such time as the Supplier has given the Customer written notice (together with such supporting evidence as the Customer may reasonably require) that it is able and willing to resume the supply of the Goods in accordance with the Customer's orders and the Customer has had a reasonable

time to terminate any alternative supply arrangements which it may have made with any other person.

2.10 *[Within 60 days after the end of each year during the Term the Supplier shall submit to the Supplier a written report showing:*

2.10.1 *the total quantity of the Goods (or any other goods of the same description) of which the Customer has taken delivery from any person in that year or which have been manufactured by the Customer in that year;*

2.10.2 *the percentage of that total quantity which in that year was ordered by the Customer from the Supplier (or was deemed to have been so ordered pursuant to any provision of this Contract); and*

2.10.3 *the average quantity which in that year was ordered by the Customer from the Supplier. - to be deleted if there is not a minimum percentage purchase obligation under article 1.2]*

3. **[RETENTION OF TITLE TO THE GOODS**

3.1 The property in the Goods shall not pass to the Customer until the Supplier has received payment in full of the price of the Goods.

3.2 Until property in the Goods passes to the Customer:

3.2.1 the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third Parties and properly stored, protected and insured and identified as the Supplier's property;

3.2.2 the Customer may resell the Goods in the ordinary course of its business; and

3.2.3 provided that the Goods are still in existence and have not been resold, the Supplier may at any time to require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods. – *delete if not applicable, for example if terms of trade require payment in advance of delivery]*

4. **PRICE OF THE GOODS**

4.1 Except as otherwise agreed in writing between the Supplier and the Customer, the prices for all Goods to be supplied under this Contract shall be the Supplier's export list prices from time to time.

4.2 The Supplier shall:

4.2.1 supply the Customer with copies of the Supplier's price lists for the Goods in force from time to time; and

4.2.2 give the Customer not less than [*specify period*] months' notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods delivered on and after the applicable date of the increase, including outstanding orders.

Alternative to sub-article 4.2.2: give the Customer not less than [*specify period*] months' notice in writing of any alteration in those prices, and the prices as so altered shall apply to all Goods order after the applicable date of the increase.

4.3 The Supplier reserves the right, by giving written notice to the Customer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Supplier of manufacturing or supplying the Goods which is due to any factor beyond the control of the Supplier (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 specification for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or any failure of the Customer to give the Supplier adequate information or instructions.

5. LATE PAYMENT AND INTEREST

5.1 If the Customer fails to pay in accordance with this Contract the price for any Goods within [thirty (30) - *specify any other period*] days after the date of the invoice, the Supplier may (without limiting any other right or remedy):

5.1.1 cancel or suspend any further delivery to the Customer under any order;

5.1.2 sell or otherwise dispose of any Goods which are the subject of any order by the Customer, whether or not appropriated to the order, and apply the proceeds of sale to the overdue payment; and

5.1.3 charge the Customer interest on the outstanding amount (both before and after any judgment) at the rate of [specify] % above the base rate from time to time of [specify name of Bank/Institution] from the due date until the outstanding amount is paid in full.

6. LIABILITY

6.1 Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, for any loss of profit or any indirect, special or consequential loss or damage (whether caused by the negligence of the Supplier, its servants or agents or otherwise) in relation to the supply of the Goods (or any failure to supply them) or their resale by the Customer, or otherwise arising out of or in connection with this Contract.

7. DURATION, TERMINATION AND CONSEQUENCES OF TERMINATION

7.1 This Contract will take effect on the date of its signature by both Parties or, if signatures do not occur simultaneously, when the latest signature is given. Unless sooner terminated pursuant to article 7.2, 7.3 or 7.4, this Contract shall continue for a period of [specify period].

7.2 The Customer shall be entitled to terminate this Contract at any time by giving not less than [specify period] written notice to the Supplier.

7.3 The Supplier may (without limiting its rights under article 5) forthwith terminate this Contract by giving written notice to the Customer, if the latter fails to pay any sum payable by it under this Contract within [specify figure] days of the due date for payment.

7.4 Either Party may (without limiting any other remedy) at any time terminate the agreement by giving written notice to the other if the other commits any breach of this Contract and (if capable of remedy) fails to remedy the breach within thirty (30) [specify any other figure] days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed. For the purposes of the present sub-article, a breach of any provision of this Contract shall be considered

capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance.

7.5 The termination of this Contract for any reason shall not affect:

7.5.1 either Party's accrued rights, remedies or liabilities including payments due at the effective date of termination; or

7.5.2 the coming into force or the continuance in force of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after termination

8. CHANGE OF CIRCUMSTANCES (HARDSHIP)

8.1 Where the performance of this Contract becomes more onerous for one of the Parties, that Party is nevertheless bound to perform its obligations subject to the following provisions on change of circumstances (hardship).

8.2 There is a change of circumstances where the occurrence of events fundamentally alters the equilibrium of this Contract either because the cost of a Party's performance has increased or because the value of the performance a Party receives has diminished, and:

8.2.1 the events occur or become known to the affected Party after the time of conclusion of this Contract;

8.2.2 the events could not reasonably have been taken into account by the affected Party at the time of conclusion of this Contract;

8.2.3 the events are beyond the control of the affected Party; and

8.2.4 the risk of the events is not one which, according to this Contract, the Party affected should be required to bear.

8.3 In case of change of circumstances the affected Party is entitled to request negotiations with a view to adapting this Contract or terminating it. The request for negotiations shall be addressed to the other Party. It shall be made without undue delay and shall indicate the grounds on which it is based. The request for negotiations does not in itself entitle the affected Party to withhold performance.

8.4 If the Parties fail to reach agreement within a reasonable time (*alternatively, the Parties may specify the length, e.g. 15 days, 30 days*) either Party may resort to the arbitration or to the court pursuant to article 22 of this Contract.

8.5 If the arbitration/court finds the existence of change of circumstances, it may:

8.5.1 terminate this Contract at a date and on terms to be determined by the arbitration/court; or

8.5.2 adapt this Contract in order to distribute between the Parties in a just and equitable manner the losses and gains resulting from the change of circumstances.

8.6 In either case, the arbitration/court may award damages for the loss suffered through a Party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.

Comment: the parties should take into consideration that in some legal systems the court revision of a contract due to change of circumstances (hardship) is not acceptable.

9. **FORCE MAJEURE**

9.1 Non-performance by a Party is excused if that Party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Contract or to have avoided or overcome it or its consequences ("Force Majeure"). The excuse for non-performance takes effect from the time of the impediment.

9.2 If any Force Majeure occurs in relation to either Party which affects or may affect the performance of any of its obligations under this Contract, it shall forthwith notify the other Party as to the nature and extent of the circumstances in question, and their effect on its ability to perform. If the notice is not received by the other Party within a reasonable time after the Party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

9.3 A Party affected by Force Majeure shall not be deemed to be in breach of this Contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this Contract, to

the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party, and the time for performance of that obligation shall be extended accordingly.

9.4 If the performance by either Party of any of its obligations under this Contract is prevented or delayed by Force Majeure for a continuous period in excess of [six (6) - *specify any other figure*] months, the other Party shall be entitled to terminate this Contract by giving written notice to the Party affected by the Force Majeure.

Alternative: If the performance by either Party of any of its obligations under this Contract is prevented or delayed by Force Majeure for a continuous period in excess of [six (6)] months, the parties shall negotiate in good faith, and use their best endeavours to agree upon such amendments to this Contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects, but if they do not agree upon such amendments or arrangements within a further period of [thirty (30)] days, the other Party shall be entitled to terminate this Contract by giving written notice to the Party affected by the Force Majeure.

9.5 When the Force Majeure is only temporary, the excuse for non-performance shall have effect for such period as is reasonable, having regard to the effect of the impediment on the performance of this Contract.

10. ENTIRE AGREEMENT - VARIATIONS

10.1 This Contract (together with the terms, if any, set out in the Schedules) constitutes the entire agreement between the Parties, and supersedes any previous agreement or understanding.

Option (in Common law systems): All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

12.2 This Contract may not be varied except in writing between the Parties.

11. NOTICES

13.1 A formal notice shall be in writing and addressed by registered mail to *[specify address of notification for each party]*.

12. ASSIGNMENT AND SUB-CONTRACTING

12.1 This Contract is personal to the parties, and neither Party shall without the prior written approval of the other:

12.1.1 assign, mortgage, charge or otherwise transfer or deal in, or create any trust over [*delete if not appropriate*], any of its rights; or

12.1.2 sub-contract or otherwise delegate (other than to that Party's personnel) the whole or any part of its obligations under this Contract to another person.

13. **EFFECT OF INVALID OR UNENFORCEABLE ARTICLES**

13.1 If any provision of this Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Contract shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of provision found to be null and void, the parties would not have concluded this Contract. The parties, if necessary with the arbitrators referred to in article 15, shall replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

Alternative (last sentence only – to be adjusted to article 15 if State Courts are to have jurisdiction): The parties, if necessary with the assistance of the Court referred to in article 15, shall replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

(Comment: The parties should take into consideration that in some legal systems the Court will not rewrite a contract.)

14. **CONFIDENTIALITY**

14.1 Both Parties understand and acknowledge that, by virtue of this Contract, they may both receive or become aware of information belonging or relating to the other Party, its business, business plans, affairs or activities, which information is confidential and proprietary to the other Party and/or its suppliers and/or customers and in respect of which they are bound by a strict duty of confidence ("Confidential Information").

14.2 In consideration of such Confidential Information being disclosed or otherwise made available to either Party for the purposes of the performance of this

Contract, both Parties hereby undertake that they will not at any time, either before or after the termination of the present agreement, and either directly or indirectly, disclose, divulge or make unauthorised use of any Confidential Information, except to the extent to which such Confidential Information:

14.2.1 is publicly known at the time of its disclosure or being made available to them;

14.2.2 after such disclosure or being made available to them, becomes publicly known otherwise than through a breach of this provision;

14.2.3 is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by one the parties, provided that, where practicable, the other Party is given reasonable advance notice of the intended disclosure.

14.3 Upon the earlier of a request from the other Party or the termination of this Contract, each Party shall return the other all documents or records in any medium or format containing any Confidential Information which are in its possession or control and will not retain any copies of them.

14.4 The provisions of this article 14 will continue without limit of time, notwithstanding the termination of this Contract for any reason.

15. **DISPUTE RESOLUTION**

15.1 Any dispute, controversy or claim arising out of or relating to this Contract, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the Rules of [*specify the Arbitration Institution, e.g. International Chamber of Commerce*] by [*specify the number of arbitrators, e.g. sole arbitrator, three arbitrators*] appointed in accordance with the said Rules. The place of arbitration shall be [*specify*]. The language of the arbitration shall be [*specify*].

Alternative 1: ad hoc arbitration

*Any dispute, controversy or claim arising out of or relating to this Agreement, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled under the rules of UNCITRAL [*or specify other rules*] by [*specify the number of arbitrators, e.g. sole arbitrator, three**

arbitrators] appointed by [specify name of appointing institution or person]. The place of arbitration shall be [specify]. The language of the arbitration shall be [specify].

Alternative 2: State Courts

Any dispute, controversy or claim arising out of or relating to this Agreement, in particular its conclusion, interpretation, performance, breach, termination or invalidity, shall be finally settled by the courts of [specify place and country] which will have exclusive jurisdiction.

16. **APPLICABLE LAW**

Alternative 1: Questions relating to this contract which are not settled by the provisions contained in the Contract itself shall be governed by the principles of law generally recognized in international trade as applicable to international agency contracts as well as the UNIDROIT Principles of International Commercial Contracts.

Alternative 2: [Specify national law] law shall apply to this Contract.

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Schedule 1
The Goods

Schedule 2
Minimum purchase quantities

DATE AND SIGNATURE OF THE PARTIES

Supplier

Customer

Date _____

Date _____

Name _____

Name _____

Signature

Signature