

Standard Terms and Conditions of Sale**1. DEFINITIONS AND INTERPRETATION**

- (a) In the Contract, unless the context otherwise requires: Acceptance means a written acceptance sent by ACO to the Buyer in respect of the Order; ACO means ACO Polycrete Pty Ltd ACN 050 102 942; Bespoke Products means those goods to be manufactured or processed by ACO to the specification of the Buyer; Buyer the person whose Order is the subject of the Acceptance; Conditions these standard terms and conditions of sale; Contract the relevant contract between ACO and the Buyer for the purchase and sale of the Goods which includes the Conditions and the Order the subject of the Acceptance; Drawings a drawing or sketch whether or not to scale but with essential measurements shown; Goods the goods or Bespoke Products (as the case may be) the subject of the Contract; Order the order placed by the Buyer with ACO; PPS means the Personal Property Securities Act 2009 (Cwlth) and the regulations thereunder; PPSR means the Personal Property Securities Register.
- (b) In the Contract, unless the context otherwise requires: (i) headings are for convenience only and do not affect the interpretation of the Contract; (ii) words importing the singular include the plural and vice versa; (iii) reference to a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (iv) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute; (v) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Contract or any part of it; (vi) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation; (vii) all references to "\$" or "dollars" are to the lawful currency of Australia; (viii) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

2. OFFER, ACCEPTANCE, QUOTATIONS AND INCONSISTENCY

- (a) A quotation by ACO shall be an invitation to the Buyer to trade with ACO. It shall not constitute an offer by ACO to the Buyer. The Buyer may use the quotation to submit an Order to ACO. Prices given in any quotation are applicable to that quotation only and will not apply in any other instance, unless confirmed in writing by ACO. Quotations are valid for the period specified in the quotation or, if no period is specified, 7 days from the date of issue. If the Buyer is given a quote and instructs ACO to proceed, the Buyer is taken to have submitted an Order to ACO on the terms of the quote. Any quotation containing a provision to supply Goods "ex stock" is subject to fulfilment of prior orders (whether to the Buyer or third parties) at the date of receipt of the Order.
- (b) A Contract shall exist as soon as, but only when, ACO issues an Acceptance. ACO is not obliged to accept an Order.
- (c) If there is any inconsistency between the terms of an Order and the Conditions, the terms of the Order prevail to the extent of the inconsistency.

3. SPECIFICATIONS AND BUYER RESPONSIBILITIES

- (a) All descriptive particulars relating to the Goods including as to weights, dimensions and performance supplied by ACO are approximate only and when contained or illustrated in catalogues, price lists, advertising or other documents are intended merely to present a general idea of the Goods described unless otherwise expressly stated to the contrary by ACO.
- (b) The Buyer is responsible for ensuring the accuracy and completeness of the terms of any Order (including any applicable specifications or drawings (submitted to ACO)).
- (c) Subject to all times to clauses 3(a), 3(b) and 5, the quantity, quality, description and specification of the Goods shall be those set out in the Order that is the subject of the Acceptance.
- (d) The Buyer must promptly provide all instruction, information and documentation reasonably requested by ACO relating to the manufacture and supply of the Goods. ACO is not liable to the Buyer for any loss or damage of any kind suffered by the Buyer as a result of any failure or delay by the Buyer in respect of the foregoing and ACO shall be entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such failure or delay without being liable to the Buyer for such extension.

4. VARIATIONS AND SAFETY

- (a) Subject to any other express term of the Contract, no addition, variation or special terms altering the Contract is binding on ACO except by a statement in writing signed by a Director of ACO which statement must record the precise variation, addition or special term and must specifically state that the Contract, is thereby varied to incorporate such change. Such change shall apply only to the relevant Contract concerned.

- (b) In the event of a shortage of, unavailability of or delay in delivery of materials or parts for manufacture of the Goods, ACO shall be entitled to substitute such other materials as it shall consider reasonably appropriate and there shall be no alteration to the price payable unless ACO agrees.
- (c) ACO may change the specification of Goods if it reasonably believes it is necessary to do so in order to conform with safety or other statutory requirements which do not materially affect quality or performance.
- (d) Despite clause 4(c), to the fullest extent permitted by law: (i) the Buyer is responsible for ensuring the Goods are safe and without risk of harm or damage when used in the context required by the Buyer; (ii) whilst ACO may manufacture or supply the Goods in accordance with the Buyer's specifications, it is the Buyer's responsibility to comply with all safety laws, applicable Australian standards or other statutory requirements or will be safe and without risk of harm or damage when used in the context required by the Buyer.
- (e) ACO may vary the Conditions from time to time, in which case those new conditions shall apply to every new Order after the Buyer is notified in writing of the new conditions.

5. BESPOKE PRODUCTS - APPROVAL OF DRAWINGS

- (a) Where necessary, on or after Acceptance ACO shall in collaboration with the Buyer prepare Drawings in respect of the Bespoke Products for approval by the Buyer.
- (b) The Buyer shall within 72 hours (or such later period as ACO may allow) of receipt of the Drawings check, sign and return a copy to ACO indicating approval or respond with comments and/or reasonable amendments.
- (c) Subject to clause 5(g), if the Buyer requires amendments and ACO is prepared to accept those amendments (in its sole discretion), then ACO shall deliver revised Drawings to the Buyer as soon as reasonably possible and the steps in clauses 5(a) and 5(b) shall be repeated until the Buyer has approved the Drawings by returning a signed copy to ACO.
- (d) The return of signed Drawings is the Buyer's instruction for ACO to manufacture the Bespoke Products in accordance with the Drawings and no further changes may be made by the Buyer without ACO's written consent.
- (e) If ACO decides the amendment alters the price payable for the Bespoke Products it will notify the Buyer who is deemed to have accepted such change unless it raises objection in writing to ACO within 72 hours of receipt of the notification from ACO. If the Buyer raises such objection, ACO may either cancel the Contract or otherwise suspend its obligations until a price is agreed.
- (f) ACO is entitled to a reasonable extension of any timeframe applicable to its obligations as a result of any failure or delay by the Buyer in returning signed Drawings to ACO without being liable to the Buyer for such extension.
- (g) Notwithstanding clause 5(c), if the Buyer has not signed and returned the Drawings to ACO within 30 days from the time of Acceptance, ACO may at any time thereafter but before the Buyer returns the signed Drawings, cancel the Contract and refund of any monies paid by the Buyer in respect of that Contract but shall otherwise have no liability to the Buyer in respect of such cancellation.
- (h) Apart from clause 15 and 16 Bespoke products are non-returnable.

6. BESPOKE PRODUCTS - TESTING AND ACCEPTANCE

- (a) Bespoke Products fabricated on site or otherwise delivered shall be subject to acceptance tests by the Buyer on delivery. It is the responsibility of the Buyer to carry out such acceptance tests as it deems appropriate.
- (b) If the Buyer has not sent written notice of defect or non-conformity with Drawings or relevant specification to ACO within 7 days of delivery the Buyer shall be deemed to have accepted the Bespoke Products are free from defect and comply in all material respects with the Drawings and relevant specification.
- (c) If the Bespoke Products conform (deemed or otherwise) in all material respects with the Drawing and relevant specification but the Buyer requires modification, then such modification shall be a new order at extra cost (as determined by ACO) subject to a new Acceptance and further time shall be allowed to ACO to attend to the modification. ACO reserves the right to accept or refuse a request for modification.

7. WARRANTIES AND INDEMNITIES

- (a) The signed Drawing is the Buyer's specification. The Buyer warrants that use by ACO of those Drawings does not infringe the intellectual property rights of any third party.
- (b) The Buyer indemnifies ACO against all losses, costs, damages and expenses (including legal costs and disbursements on a full indemnity basis and any debt collection agency fees on a full indemnity basis) and all claims, demands, suits, actions and proceedings suffered, paid, incurred, instituted or defended by ACO resulting from or arising from any breach or threatened breach of the Contract by the Buyer. Any amounts payable by the Buyer to ACO under this clause are payable on demand.

8. CANCELLATION

- (a) ACO reserves the right to cancel any Contract at anytime before the Goods are delivered in which case ACO will refund any monies paid by the Buyer to ACO in respect of that Contract but shall otherwise have no liability to the Buyer in respect of such cancellation.

9. PRICE AND OTHER CHARGES

- (a) Except where agreed in writing to the contrary all prices are ex-ACO's warehouse and carriage will be charged extra and is payable by the Buyer at the time specified by ACO.
- (b) Prices quoted are for the exact size, quantity, quality and description of Goods in ACO's quotation and variations (including where the Acceptance differs from the quotation) may incur additional charges as specified by ACO and these are payable at the time specified by ACO.
- (c) Prices are subject to revision at any time prior to delivery (including part Orders) of the Goods in the event of increases in cost beyond ACO's control.
- (d) Credit card payments may be accepted, however will incur a processing fee of the value of the transaction. The processing fee will be notified at the time of the transaction.

10. PAYMENT AND CREDIT STATUS

- (a) Buyers are invited to apply for "approved credit status". Subject to clause 10(b), Buyers without approved credit status or who have exceeded ACO's credit terms must pay all amounts payable in respect of the relevant Contract in full upon receipt of a pro-forma invoice by ACO prior to delivery of the Goods. ACO may at any time revoke or suspend the Buyer's approved credit status and/or impose limitations or restrictions on the amount of credit available or the terms on which credit is provided. If a Buyer's credit status is revoked or suspended then they cease to have, for the relevant period, "approved credit status".
- (b) For Buyers without approved credit status for Bespoke Products the price is payable fifty percent on Acceptance, and balance upon being notified by ACO that the Bespoke Products are ready for delivery.
- (c) If the Buyer fails to make payment on time or if ACO has reasonable grounds for doubting that payment will be made on time then without prejudice to any other right or remedy available to ACO, ACO may: (i) terminate the relevant Contract (including exercising a right of termination after suspension); (ii) suspend its obligations until payment is made; (iii) appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as ACO decides; (iv) require all monies due in respect of the relevant Contract to become immediately due and payable; and/or (v) charge interest on the overdue amount for the relevant overdue period at the rate of 2% per annum above the National Australia Bank's Bench mark Rate calculated daily.
- (d) Payment is due even if title in the Goods has not passed to the Buyer.
- (e) In addition to any other monies payable by the Buyer, the Buyer must pay on demand by ACO all charges incurred by ACO with respect to the recovery or return of Goods from the Buyer including any re-stocking charges (for an amount not exceeding 25% (subject to change without notice) of the price payable for the Goods under the relevant Contract), whether or not such recovery or return of Goods is in relation to any breach of the relevant Contract by the Buyer.
- (f) If no timeframe is specified by ACO in respect of a payment, then it is payable within 7 days of demand by ACO.
- (g) All times for payment of all amounts are of the essence.
- (h) ACO manufactures and supplies materials and is not an installer or sub-contractor and no monies may be held by the Buyer as retention, deferment or performance sureties nor may the Buyer make any set-off, deduction or withholding in respect of monies owed to ACO.
- (i) All quotes exclude the Goods and Services Tax (GST). All relevant Government charges are on top of the quoted price.

11. DELIVERY

- (a) Unless the Acceptance expressly provides otherwise, delivery shall be made by the Buyer collecting the Goods at ACO's premises on ACO's notification that the Goods are ready for collection.
- (b) ACO may deliver Goods in instalments in any order. Any claim by the Buyer in respect of any individual instalment shall not entitle the Buyer to reject any other instalment or treat the Contract as repudiated. If the Goods are delivered in instalments ACO is entitled to render an invoice and require payment in respect of those Goods within the timeframe specified by ACO.
- (c) To the fullest extent permitted by law, in the event of failure to deliver within written agreed delivery times, where ACO has not exercised its rights of cancellation or termination, ACO's liability to the Buyer is limited to the excess of the cost to the Buyer (in the cheapest available market) of purchasing substantially similar goods to replace those Goods not delivered over the price of the Goods not delivered.
- (d) If the Buyer fails to take or accept delivery of the Goods or fails to give ACO adequate delivery instructions then ACO may charge for storage and insurance costs in such amounts as determined by ACO until actual delivery occurs and these are payable at the time specified by ACO. Without prejudice to any other rights or remedies of ACO, where the Buyer fails to take or accept delivery of the Goods within 30 days after ACO notifies the Buyer that the Goods are available for delivery or

the Buyer has not provided adequate delivery instructions within that timeframe to ACO, ACO may resell the Goods on such terms and for such price as it determines. Apart from applying any money received from the resale of the Goods (less any amounts incurred by ACO in respect of such resale) towards reducing the amounts payable by the Buyer, the Buyer remains liable for all amounts it is otherwise liable to pay to ACO.

- (e) Subject to clause 6, if the Buyer has not sent written notice of defect or non-conformity with drawings or relevant specification to ACO within 7 days of delivery of the Goods that are not Bespoke Products, the Buyer shall be deemed to have accepted that those Goods are free from defect and comply in all material respects with the drawings and relevant specification.

12. DELIVERY DATES

- (a) Delivery dates are estimated only and are not guaranteed. ACO will endeavour to meet the Buyer's delivery requirements but time shall not be of the essence and ACO shall not be liable for any loss or damage whether direct consequential or otherwise caused by delay in delivery. Without limiting the foregoing, should supply of the Goods be prevented, delayed or hindered directly or indirectly by circumstances beyond ACO's reasonable control then, at ACO's option, either the delivery time shall be extended until the effect of the delaying cause has ceased or ACO may cancel the Contract in which case ACO will refund any monies paid by the Buyer in respect of that Contract but shall otherwise have no liability to the Buyer in respect of such cancellation.

13. RISK AND TITLE

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer: (i) in the case of the Goods to be collected from ACO's premises, at the time ACO notifies the Buyer the Goods are available for collection; or (ii) in the case of Goods to be delivered by ACO, at the earlier of the time of actual delivery or at the time which is 48 hours after ACO notified the Buyer that the Goods were available for delivery.
- (b) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, title in the Goods the subject of the relevant Contract shall not pass to the Buyer until ACO has received payment in full of all monies due under that Contract.
- (c) Until such time as title in the Goods passes to the Buyer, the Buyer shall hold the Goods as ACO's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as ACO's property. Despite the foregoing, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall immediately account to ACO for the proceeds of sale or otherwise of the Goods, (including insurance proceeds), and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties.
- (d) Until such time as title in the Goods passes to the Buyer (and provided the Goods have not been resold), ACO shall be entitled at any time to require the Buyer to deliver up the Goods to ACO 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.
- (e) 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 ACO, but if the Buyer does so all monies owing by the Buyer to ACO shall (without prejudice to any other right or remedy of ACO) forthwith become due and payable or under credit terms where applicable.

14. SHORTAGES AND DAMAGE TO GOODS IN TRANSIT

- (a) ACO shall have no liability in respect of Goods lost or damaged in transit. The Buyer must note such loss or damage on the delivery receipt and file a freight claim with the Buyer's nominated carrier within 48 hours of delivery or such shorter period as may be required by the carriers' condition of carriage.
- (b) The Buyer must note missing Goods on the delivery receipt and must report this to ACO's Customer Service Department within 48 hours of receipt of shipment.

15. CONSUMERS

If the Customer is a Consumer:

- (a) The goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. The Customer is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) The guarantees under the Australian Consumer Law are given by the Supplier.
- (c) If the Customer believes the goods do not comply with the statutory guarantees, they must contact the Supplier and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods do not comply with the statutory guarantee the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
- (d) No other guarantees or warranties apply to the goods unless a further and additional warranty is provided, in writing, to the Customer by the Supplier.

16. LIMITATION OF LIABILITY

- (a) Goods sold by ACO shall be of satisfactory quality but shall not be sold as fit for any particular purpose or as complying with any description unless the Buyer shall have informed ACO in writing that it is relying upon ACO's skill and judgement or upon such description and ACO shall have accepted such stipulation in writing signed by a Director. ACO shall not be responsible for any modifications made by the buyer.
- (b) Subject to clauses 15(a) and 15(c), ACO will repair or replace any of the Goods or parts thereof which have been fully paid for by the Buyer in respect of any defects due to faulty materials or workmanship attributable to ACO or from ACO's failure to supply the Goods in accordance with the quality or specification ordered provided such claims are notified in writing to ACO in accordance with this clause. In the case of: (i) defects which would have been apparent to the Buyer on reasonable examination on delivery, the Buyer shall notify ACO of the defects in writing within 7 days of delivery; (ii) any other defects, the Buyer shall notify ACO of the defects in writing within 7 days of the date when the defects became apparent but in any event no later than 6 months after delivery; (iii) any failure to supply Goods of the quality or specification ordered, within 7 days of delivery. The Buyer must return the defective Goods to ACO and bear all delivery and return delivery costs. The Buyer agrees to provide all information and documentation to allow ACO to assess the claim and to inspect the Goods wherever located.
- (c) To the fullest extent permitted by law: (i) the obligations of ACO in respect of any defects due to faulty materials or workmanship attributable to ACO or from ACO's failure to supply the Goods in accordance with the quality or specification ordered are as set out in the Contract; (ii) ACO shall not be liable to the Buyer for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of ACO irrespective of whether or not ACO was made aware of the possibility of such loss; (iii) all express and implied warranties, terms and conditions in relation to the obligations of ACO including those implied by use, trade, custom or otherwise are hereby excluded; (iv) ACO's total liability to the Buyer for breach of its obligations to the Buyer (including due to negligence) are at the option of ACO limited to replacing or resupplying the Goods or paying for the cost of replacing or resupplying the Goods or refunding the relevant price paid by the Buyer to ACO for the relevant Goods.

17. EXPORT TERMS

- (a) The Buyer must pay for all customs duties, import duties, tariffs and other charges applicable to exporting the Goods to a place outside of Australia. The Buyer is also responsible for obtaining and complying with all necessary import and export licences relating to the Goods.
- (b) Additional terms relating to exports may appear on ACO's quotation (which forms the Order) and Acceptance.

18. SUSPENSION AND TERMINATION

- (a) If ACO has a right of suspension under the Contract or the Buyer defaults or fails or delays in performing its obligations, then in addition to and without prejudice to any other rights or remedies of ACO (including exercising a right of termination after suspension), ACO may suspend the performance of its obligations until, in the case of breach, such breach is rectified or until, in the case of otherwise exercising a right of suspension, ACO lifts such suspension, without being liable to the Buyer for any loss or damage of any kind suffered by the Buyer as a result of such suspension. In addition, ACO is entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such suspension.
- (b) ACO shall be entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such suspension.
- (c) If a party: (i) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or external controller appointed to it; (ii) becomes bankrupt, insolvent or is wound-up; (iii) has a resolution passed for its winding-up, commits an act of insolvency or bankruptcy; (iv) enters into any scheme or arrangement with its creditors; (v) breaches an essential term of the Contract; (vi) breaches a term of the Contract that is not capable of remedy; or (vii) subject to the foregoing, breaches a term of the Contract that is capable of remedy but is not so remedied within 14 days of written demand, then the other party by written notice may terminate the Contract immediately.
- (d) Termination shall not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination.

19. APPLICATION OF CONDITIONS AND AUTHORITY TO CONTRACT

- (a) The Conditions (as in force at the relevant time) shall apply to every Order (even if not attached or referred to in an Order).
- (b) Each Contract constitutes a separate and independent agreement and any action taken in respect one Contract does not automatically affect any or all other Contracts.

- (c) The Buyer agrees ACO is entitled to assume that anyone on behalf of the Buyer (including its employees) who places an Order has full power and authority to bind the Buyer and the Buyer agrees to be bound by the acts or omissions of such persons.
- (d) If the Buyer is acting as trustee of a trust, the Buyer warrants that it is lawfully appointed as the trustee of that trust and that the trust of which it is trustee has the power to enter into the Contract and any credit arrangements with ACO.

20. PERSONAL PROPERTY SECURITIES LAWS

- (a) In respect of the PPS, each Order, Conditions, Contract and all invoices issued by ACO in respect of the Contract constitute a "security agreement" for the purposes of the PPS.
- (b) For the purposes of s115 of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to: (i) contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS.
- (c) To the fullest extent permitted by law, the Buyer hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.
- (d) The Buyer must do all things reasonably required by ACO to register and perfect that interest under the terms of the PPS and PPSR.
- (e) The Buyer will, at ACO's request, pay any or all of ACO's costs and expenses, on a full indemnity basis, related to registration and enforcement of any security interest or security agreement (including in relation to any security interest granted by a person guaranteeing the Buyer's performance of these terms).

21. GENERAL

- (a) ACO is a member of the group of companies whose holding company is Severin Ahlmann Holdings GmbH and, accordingly, ACO may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of ACO.
- (b) Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other 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. For clarity, notices may be given by pre-paid post, personal delivery, fax or email.
- (c) In the Contract: (i) the Contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia; (ii) any legal action or proceedings with respect to the Contract against any party or any of its property and assets may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State; (iii) subject to the express written terms of the Contract, the Contract shall confer rights and benefits only upon a person expressed to be a party and not upon any other person; (iv) the Buyer shall not transfer, sub-contract or assign its rights or obligations under the Contract without the prior consent in writing of ACO; (v) ACO may sub-contract or assign its rights or obligations under the Contract at anytime; (vi) the failure to exercise or delay in exercising by any party of any right conferred by the Contract shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party; (vii) subject to the terms of the Contract, the rights of a party conferred by the Contract are cumulative and are not exclusive of any rights provided by law; (viii) each party shall execute all documents and perform all acts necessary to give full effect to the Contract; (ix) apart from any credit arrangements, the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither party shall, after the Contract has been entered into, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract or the credit arrangements; (x) any provision of the Contract which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction; (xi) no provision of the Contract shall merge on completion of the Contract; (xii) if by reason of any fact, circumstance, matter or thing beyond the reasonable control of ACO, ACO is unable to perform in whole or in part any obligation under a Contract, ACO shall be relieved of that obligation to the extent and for the period that it is so unable to perform and are not liable to the Buyer for any loss or damage of any kind suffered by the Buyer arising out of such inability to perform.