

Nihon Pall Ltd
Standard Terms and Conditions of Sale
Covering Sales of Equipment, Systems and Made to Order Goods

1. Applicability: Entire Agreement:

- 1.1** These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods identified on Buyer's purchase order (the "**Goods**") by Seller to Buyer. By placing a purchase order, Buyer makes an offer to purchase the Goods pursuant to these Terms, including: (a) a list of the Goods to be purchased; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location (the "**Basic Purchase Order Terms**"), and on no other terms.
- 1.2** The accompanying quotation, proposal, confirmation of sale, invoice, order acknowledgment or similar document delivered by Seller to Buyer (the "**Sales Confirmation**"), the Basic Purchase Order Terms and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
- 1.3** Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. Buyer and Seller Responsibilities:

- 2.1** Buyer shall be responsible for correctly specifying and advising Seller of its requirements for the Goods, including, where applicable, design specifications and is responsible for any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by it, if any, or between such documents and any of the other documents forming part of this Agreement. Buyer agrees that the design specifications and requirements described in Buyer's documents delivered to Seller correctly represent Buyer's requirements for the Goods as advised to Seller, and acknowledges that Seller's supply of the Goods will be based on such design specification and requirements.
- 2.2** It is Buyer's sole responsibility to ensure that its premises are safe and suitable for the installation and operation of the Goods or performance of any associated services. When requested and appropriate, and at Buyer's cost, Seller shall, prior to delivery of any part of the Goods inspect the relevant premises to confirm that the premises are suitable for the installation and operation of any part of the Goods and, if Seller performs such inspection and determines that any aspect of any inspected premises is not suitable for the installation and operation of that part of the Goods, Seller shall provide Buyer with such information in writing and such assistance as may be necessary to enable Buyer at its own cost to prepare the premises so that they are suitable for the installation and operation of the Goods.
- 2.3** Buyer shall allow the authorised personnel of Seller access to its premises during normal working hours and upon prior agreement solely for the purpose of performing its obligations under this Agreement.
- 2.4** If Seller is performing installation, oversight or commissioning services and, in the reasonable opinion of Seller, it is necessary to remove or disconnect any existing equipment of Buyer in order to install or commission the Goods, Seller shall give Buyer reasonable prior notice of such requirements and Buyer shall provide Seller, at Buyer's cost, with such assistance as is reasonably necessary to facilitate such removal or disconnection.
- 2.5** Standard terms of sale include two (2) sets of operating instructions in Seller's standard electronic format. If additional or alternative formats are required, they are available at an additional charge. Upon receipt of a request for additional sets, a price quotation will be forwarded.

3. Delivery:

- 3.1** The Goods will be delivered by the date specified in the Agreement, or if no date is specified, within a reasonable time after receipt of Buyer's purchase order, subject to the availability of finished Goods. The delivery and/or shipping schedule is the best estimate possible based on conditions existing at the time of Seller's Sales

Confirmation or Seller's quotation and receipt of all specifications, as applicable, and in the case of non-standard items, any such date is subject to Seller's receipt of complete information necessary for design and manufacture. Seller shall not be liable for any delays, loss or damage in transit or for any other direct, indirect, or consequential damages due to delays, including without limitation, loss of use.

- 3.2** Seller may, in its sole discretion, without liability or penalty, deliver partial shipments of Goods to Buyer as they become available, in advance of the quoted delivery date. If the Goods are to be delivered in installments, then insofar as each shipment is subject to the same Agreement, the Agreement will be treated as a single contract and not severable.
- 3.3** Seller shall make the Goods available to Buyer at Seller's factory or designated shipment point (each, "**Seller's Shipment Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods within five (5) days of Seller's written notice that the Goods have been delivered to the Seller's Shipment Point.
- 3.4** If for any reason, Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Seller's Shipment Point, or if Seller is unable to deliver the Goods at the Seller's Shipment Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorisations: (a) title and risk of loss to the Goods shall pass to Buyer; (b) the Goods shall be deemed to have been delivered; and (c) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, freight, restocking, storage and insurance).

4. Shipping Terms:

- 4.1** Unless otherwise mutually agreed to in writing signed by both Seller and Buyer, delivery from Seller's Shipment Point shall be FCA (Seller's Shipment Point) INCOTERMS 2010.
- 4.2** At Buyer's request, Seller will, at Buyer's risk and expense, arrange for the delivery of the Goods to Buyer's site/facility. Buyer will pay, or reimburse Seller for all freight charges, taxes, duties, entry fees, brokers' fees, special, miscellaneous and all other ancillary charges and special packaging charges.

5. Title and Risk of Loss:

Title and risk of loss passes to Buyer upon the earlier of: (a) delivery of the Goods to the Delivery Point; or (b) deemed delivery pursuant to clause 3.4 above. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants Seller a lien on and security interest in, and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

6. Inspection and Rejection of Nonconforming Goods:

- 6.1** Buyer shall inspect the Goods within ten (10) days of receipt (the "**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. Such notification shall identify each and every alleged nonconformity of the Goods and describe that portion of the shipment being rejected. Seller shall then respond with instructions as to the disposition of the Goods.
- 6.2** If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion: (a) replace such nonconforming Goods with conforming Goods, or (b) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's Shipment Point. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
- 6.3** Buyer acknowledges and agrees that the remedies set forth in clause 6.2 are Buyer's exclusive remedies for the delivery of nonconforming Goods. Except as provided under clause 6.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Services:

Seller will provide such installation, oversight or commissioning services as are expressly described in the Sales Confirmation (collectively, the “**Services**”), during normal business hours, unless otherwise specified in the Sales Confirmation. Services requested or required by Buyer outside of these hours or in addition to the quoted or agreed upon services will be charged at Seller’s then current schedule of rates, including overtime charges, if applicable, and will be in addition to the charges outlined in the Sales Confirmation.

8. Purchase Price:

The price for the Goods and/or Services thereof shall be Seller’s quoted price. Seller may also at any time assess a fuel or energy surcharge (in addition to the price of the Goods) (the “**Purchase Price**”). The Purchase Price is based on the project schedule defined in this Agreement, Sales Confirmation or applicable contract documents. Notwithstanding anything to the contrary set forth herein, in the event of any delay in the Seller’s delivery schedules caused by Buyer or its representatives (other than for Force Majeure or delays caused by Seller), including without limitation, a suspension of work or the project, a postponement of the delivery date or failure to timely issue a notice of commencement or similar document, then the price for the Goods shall increase by one percent (1%) for every month or partial month of such delay and this Agreement shall be construed as if the increased Purchase Price were originally inserted herein, and Buyer shall be billed by Seller on the basis of the such increased Purchase Price.

9. Taxes:

The Purchase Price is exclusive of any applicable federal, state or local sales, use, excise or other similar taxes, including without limitation a value added tax, goods and services tax or other similar tax. All such taxes will be for Buyer’s account and will be paid by Buyer to Seller upon submission of Seller’s invoices. Buyer agrees to make tax accruals and payments to the tax authorities as appropriate. If Buyer is exempt from any applicable sales tax or equivalent but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Number to Seller in a timely manner and the Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller’s invoices.

10. Payment:

10.1 If this Agreement provides for installment payments, payments shall be made per the following schedule (each a “**Payment Milestone**”):

- (a) 5% of the Purchase Price upon earlier of: (i) Seller being awarded the project, or (ii) delivery to the Seller of the Purchase Order, or (iii) the Sales Confirmation.
- (b) 20% of the Purchase Price upon first submittal of drawings by Seller.
- (c) 20% of the Purchase Price upon completion of submittals of drawings by Seller.
- (d) 20% of the Purchase Price upon notice of commencement of fabrication by Seller.
- (e) 25% of the Purchase Price upon the earlier of (i) date of shipment by Seller of the Goods, or (ii) date of Seller’s notice that the Goods are ready for shipment by Seller (“**Equipment Completion**”).
- (f) 10% of the Purchase Price upon the earlier of (i) first usable effluent being produced by the Goods, or (ii) thirty (30) days from shipment of the Goods.

10.2 In the event that achievement of a particular Payment Milestone is delayed or suspended due to the Buyer’s convenience or other reasons for which the Buyer or its representatives is responsible, such Payment Milestone will be deemed to have occurred and Seller shall be entitled to invoice Buyer as if achievement of such Payment Milestone had been achieved. In such circumstances, Buyer must notify Seller in writing of the reasons for the delay and anticipated duration of the delay. Seller will mark the Goods (or parts thereof) as the Buyer’s property and shall store the Goods (or parts thereof) in a segregated area until actual delivery.

10.3 Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller’s invoice. Buyer shall make all payments hereunder in Japanese Yen by EFT, wire transfer or cheque. Payment for foreign billing shall be in accordance with Seller’s written instructions.

10.4 Buyer shall pay interest on all late payments at the lesser of the rate of one and a half percent (1.5%) per month or the highest permissible rate under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including without limitation, reasonable legal fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend performance of any Purchase Order, or suspend the delivery of any Goods, if Buyer fails to pay any amounts when due hereunder and such failure

continues for five (5) days following written notice from Seller. Additionally, Seller may require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer or other grounds for insecurity warrant such action.

10.5 All sales are subject to the approval of Seller's credit department.

10.6 Buyer may not withhold or setoff (or try to setoff) any amounts that may be claimed by Buyer against any amounts that are due and payable to Seller by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10.7 Notwithstanding anything herein to the contrary, this Agreement may be modified or terminated/cancelled, and scheduled shipments hereunder may be deferred or changed, only: (i) upon Buyer's prior written notice to Seller, and Seller's written acknowledgment of the notice; and (ii) upon terms satisfactory to Seller. Buyer shall pay to Seller all fees, charges and/or costs that Seller assesses because of any modification, termination/cancellation, deferment and/or change, including without limitation all termination/cancellation fees, restocking fees, storage fees, insurance costs, freight costs, nonrecurring engineering or production costs and recovery of cost plus reasonable profit required in the event of Buyer's termination without cause.

10.8 Buyer and Seller both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Seller and speaking with an accounts receivable representative before mailing or transferring any monies using the new instructions. Seller will provide Buyer with that information in connection with the transaction. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions, but instead will provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

11. Limited Warranty:

11.1 Limited Warranty for Goods. Seller warrants to Buyer that: (i) for a period of twelve (12) months from the date Seller ships the Goods to Buyer (including deemed delivery pursuant to Sections 3.4 and 10.2 above); or (ii) in the case of Goods which require installation by Seller's personnel, for a period ending either (a) twelve (12) months from the date of installation or the date Seller receives final acceptance from Buyer (if applicable), or (b) fifteen (15) months from the date Seller ships the Goods to Buyer, whichever date of (ii)(a) or (b) is earlier (each such period, the "**Warranty Period**"), the Goods manufactured by Seller, when properly installed and maintained, and operated at ratings, specifications and design conditions specified by Seller, will materially conform to Seller's specifications for such Goods set forth in Seller's proposal, or, in the absence of such a proposal, such specifications as have been provided by Buyer to Seller and accepted in writing by Seller and included in the Sales Confirmation at the time of the order, and will be free from material defects in material and workmanship (this "**Limited Warranty**"). Buyer shall notify Seller promptly in writing of any claims within the Warranty Period and provide Seller with an opportunity to inspect and test the Goods or service claimed to fail to meet this Limited Warranty. Buyer shall provide Seller with a copy of the original invoice for the product or service, and prepay all freight charges to return any Goods to Seller's factory, or other facility designated by Seller. All claims must be accompanied by full particulars, including system operating conditions, if applicable. If the defects are of such type and nature as to be covered by this Limited Warranty, Seller shall, at its option and in its sole discretion, either: (a) accept return of the defective Goods and furnish replacement Goods; (b) furnish replacement parts for the defective Goods; (c) repair the defective Goods; or (d) accept return of the defective Goods and return payments made, or issue credits for, such defective Goods. If Seller determines that any warranty claim is not, in fact, covered by this Limited Warranty, Buyer shall pay Seller its then customary charges for any additionally required service or products.

11.2 Limited Warranty for Services. Seller further warrants that all Services performed hereunder, if any, will be performed in a workmanlike manner in accordance with applicable law and industry standards by qualified personnel (this "**Limited Warranty for Services**"); this Limited Warranty for Services shall survive for thirty (30) days following Seller's completion of the Services (the "**Service Warranty Period**"). In the event of a warranty claim under this Limited Warranty for Services, Buyer shall inform Seller promptly in writing of the details of the claim within the Service Warranty Period. Seller's liability under any service warranty is limited (in Seller's sole discretion) to repeating the service that during the Service Warranty Period does not meet this Limited Warranty for Services or issuing credit for the nonconforming portions of the service. If Seller determines that any warranty claim is not, in fact, covered by the foregoing Limited Warranty for Services, Buyer shall pay Seller its then customary charges for all services performed by Seller.

11.3 Other Limits. EXCEPT FOR THE WARRANTIES SET OUT IN CLAUSES 11.1 AND 11.2, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller does not warrant against, and in no event shall Seller be liable for, damages or defects arising out of improper or abnormal use, misuse, abuse, improper installation (other than by Seller), application, operation, maintenance or repair, alteration, accident, or for negligence in use, storage, transportation or handling or other negligence of Buyer. In no event shall Seller be liable for any Goods repaired or altered by someone other than Seller other than pursuant to written authorisation by Seller.

11.4 Exclusive Obligation. THIS WARRANTY IS EXCLUSIVE. THE LIMITED WARRANTY AND THE LIMITED WARRANTY FOR SERVICES ARE THE SOLE AND EXCLUSIVE OBLIGATIONS OF SELLER WITH RESPECT TO THE DEFECTIVE GOODS AND SERVICES. SELLER SHALL NOT HAVE ANY OTHER OBLIGATION WITH RESPECT TO THE GOODS, SERVICES, OR ANY PART THEREOF, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE. THE REMEDIES SET OUT IN CLAUSES 11.1 AND 11.2 SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET OUT IN CLAUSES 11.1 AND 11.2.

11.5 Buyer Breach. In no event shall Buyer be entitled to claim under the above Limited Warranties if Buyer is in breach of its obligations, including but not limited to payment, hereunder.

12. Limitation of Liability:

12.1 IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, INCLUDING WITHOUT LIMITATION, REMANUFACTURING COSTS AND REWORK COSTS, DE-INSTALLATION OR RE-INSTALLATION COST, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (TORT, CONTRACT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND WHATEVER THE FORUM, WHETHER ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, PACKAGING, DELIVERY, STORAGE, USE, MISUSE OR NON-USE OF ANY OF ITS GOODS OR SERVICES OR ANY OTHER CAUSE WHATSOEVER.

12.2 IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

12.3 The limitation of liability set forth in clause 12.2 above shall not apply to (a) liability resulting from Seller's gross negligence or willful misconduct, and (b) death or bodily injury resulting from Seller's acts or omissions.

13. Cancellation:

Buyer may not cancel this Agreement after Sales Confirmation unless all the details are approved in writing by the parties, including Buyer's agreement to pay a stated amount of termination charges. Unless otherwise agreed to in writing by Seller, the termination charges shall be as follows:

<u>Termination Charge</u>	<u>Milestone</u>
25% of the Purchase Price	after Sales Confirmation but prior to release to purchase materials
50% of the Purchase Price	after release to purchase materials but prior to release for fabrication
75% of the Purchase Price	after release for fabrication but prior to Equipment Completion
95% of the Purchase Price	after Equipment Completion but prior to release for shipment
100% of the Purchase Price	after release for shipment

14. Termination:

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Variations:

Seller shall not be obligated to implement any changes or variations in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the variation and any resulting price, schedule or other contractual modifications. This includes any changes or variations necessitated by a change in applicable law occurring after the effective date of this Agreement, including these Terms.

16. Intellectual Property Infringement:

Buyer has no authorization to make any representation, statement or warranty on behalf of Seller related to any Goods sold hereunder. Buyer shall indemnify and defend, at its own expense, Seller against claims or liability for U.S. or applicable foreign patent, copyright or trademark or other intellectual property infringement and for product liability arising from the preparation or manufacture of the Goods according to Buyer's specifications or instructions, or from Buyer's unauthorized or improper use of Seller's Goods or any changes or alterations to Seller's Goods made by persons other than Seller, or from the use of the Goods in combination with products not furnished by Seller.

17. Ownership of Materials:

17.1 All ideas, concepts, whether patentable or not, devices, inventions, copyrights, improvements or discoveries, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information that are: (a) created, prepared, reduced to practice or disclosed by Seller; and/or (b) based on, derived from, or utilize the Confidential Information of Seller, and all related intellectual property rights, shall at all times remain Seller's property. No right, title or interest in any patents, trademarks, trade names or trade secrets, or in any pattern, drawing or design for any of the Goods or in any other Seller intellectual property right, shall pass or transfer to Buyer and Seller shall at all times retain ownership rights therein. Notwithstanding the foregoing, Seller grants Buyer a non-exclusive, nontransferable license to use any such material to the extent necessary and solely for Buyer's use of the Goods purchased by Buyer from Seller hereunder. Buyer shall not disclose any such material to third parties without Seller's prior written consent.

17.2 As a condition to Seller's delivery to Buyer of the Goods, Buyer shall not, directly or indirectly, and shall cause its employees, agents and representatives not to: (i) alter or modify the Goods, (ii) disassemble, decompile or otherwise reverse engineer or analyse the Goods, (iii) remove any product identification or proprietary rights notices, (iv) modify or create derivative works, (v) otherwise take any action contrary to Seller's rights in the technology and intellectual property relating to the Goods, (vi) assist or ask others to do any of the foregoing.

18. Export:

As a condition to Seller's delivery to Buyer of the Goods, Buyer agrees, with respect to the exportation or resale of the Goods, by Buyer, to comply with all requirements of the International Traffic in Arms Regulations ("**ITAR**") and the Export Administration Regulations ("**EAR**"), regulations issued thereunder and any subsequent amendments thereto, and all other National, including, but not limited to, European, government laws and regulations on export controls, including laws and regulations pertaining to export licenses, restrictions on export to embargoed countries and restrictions on sales to certain persons and/or entities. Buyer further agrees that the shipment and/or delivery of the Goods by Seller is contingent upon Seller obtaining all required export authorisations, licenses and permits (collectively, "**Authorisations**") and Buyer agrees that Seller shall not be liable to Buyer for any failure or delay in the shipment or delivery of the Goods if such Authorisations are delayed, conditioned, denied or not issued by the regulatory or governmental agencies having jurisdiction over such Authorisations.

19. Confidentiality:

If Seller discloses or grants Buyer access to any research, development, technical, economic, or other business information of "know-how" of a confidential nature, whether reduced to writing or not, Buyer will not use or disclose any such information to any other person or company at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement ("**Confidentiality Agreement**"), the terms and conditions of the Confidentiality Agreement shall take precedence over the terms of this paragraph. The obligations set out in this clause 19 shall survive the termination of this Agreement.

20. No Waiver:

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set out in writing and signed by Seller. Seller's failure to exercise, or to delay in exercising, any right, remedy, power or privilege arising

from this Agreement, or to insist on Buyer's strict performance of the Terms at any time shall not operate or to be construed as a waiver by Seller.

21. Force Majeure:

Under no circumstances shall Pall have any liability for any breach relating to non-performance or underperformance caused by extreme weather, natural disaster, fire, accident or other act of God; strike, lock out or other labor shortage or disturbance; lock down, boycott, embargo or tariff; terrorism or act of terrorism, war or war condition or civil disturbance or riot; failure of public or private telecommunications networks; delay of carriers or other industrial, agricultural or transportation disturbance; failure of normal sources of supply; epidemics, pandemics, contagion, disease or quarantine; law, regulation or any act of government; or any other cause beyond Pall's reasonable control. Pall's performance shall be excused and deemed suspended during the continuation of such event or events and, for a reasonable time thereafter, delayed or adjusted accordingly.

22. No Third-Party Beneficiaries:

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

23. Relationship of the Parties:

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. Validity:

If any provision of this Agreement, the Sales Confirmation or these Terms is held by any competent authority to be invalid or unenforceable in whole or in any part, such provision shall be ineffective, but only to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision nor the other provisions, which shall not be affected.

25. Assignment:

Buyer shall not assign or otherwise transfer this Agreement or any of its rights and obligations hereunder in whole or in part to any third party without the prior written consent of Seller. Any such unauthorized assignment will be deemed null and void and not binding to Seller.

26. Settlement of Disputes:

Any dispute arising out of or in connection with this Agreement that cannot be settled amicably by mutual discussion between Seller and Buyer within thirty (30) days after the receipt of notice on the existence of a dispute by any party shall be settled by arbitration under Commercial Arbitration Rules of The Japan Commercial Arbitration Association conducted in the Japanese language in Tokyo, Japan by three (3) arbitrators appointed in accordance with the Rules. The decision of the arbitrators will be final, binding, and incontestable and may be used as a basis for judgment thereon in Japan or elsewhere.

For the purpose of enforcing any arbitration award, Seller and Buyer choose the general, permanent and non-exclusive domicile of the Tokyo District Court of Japan without prejudice to Seller or Buyer's rights to enforce any arbitration awards in any court having jurisdiction over the other party or its assets. Seller shall at all times be entitled to obtain equitable, injunctive or similar relief from any court having jurisdiction in order to protect its intellectual property and confidential information.

27. Governing Law:

This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement of the transaction(s) contemplated by it, shall be governed by the laws of Japan, without regard to conflict of laws principles therein. Any dispute arising out of this Agreement shall be settled by The Japan Commercial Arbitration Association in Tokyo. The arbitration award shall be final and binding on both parties.

28. Survival:

All payment, confidentiality and indemnity obligations, warranties, limitations of liability, product return, and ownership of materials provisions together with those sections the survival of which is necessary for the interpretation or enforcement of these Terms, shall continue in full force and effect for the duration stated in such provisions or the applicable statute of limitations.

29. Amendment and Modification:

This Agreement may only be amended or modified in writing which specifically states that it amends this Agreement and is signed by an authorised representative of each party.