

## GENERAL SALES TERMS AND CONDITIONS

June 2022

These General Sales Terms and Conditions (“**GSTC**”) apply to any sale of products and any associated services (“**Goods**”) by the Berry Global, Inc. subsidiary/ies identified in a P.O. (as defined below) supplying such Goods (“**Berry**”) to the purchaser (“**Buyer**”) under a Contract (as defined below), to the exclusion of any other terms that Buyer seeks to impose or incorporate or which may be implied by law, trade custom, practice or course of dealing.

**1. Basis for Sale.** A “**Contract**” is formed either: **(i)** by Berry issuing a quotation to Buyer which is capable of acceptance by Buyer and which Buyer so accepts in accordance with its terms and these GSTC; or **(ii)** Buyer issuing a purchase order (“**P.O.**”) to Berry, which constitutes an offer by Buyer to purchase Goods in accordance with its terms and these GSTC and shall only become binding upon Berry if and once accepted by Berry in writing. If Berry amends the P.O. issued by Buyer, such amended P.O. shall be accepted by Buyer in writing for the Contract to be formed. Buyer shall ensure that the terms of the P.O. are complete and accurate. It shall be at Berry’s entire discretion as to whether it accepts a P.O. issued by Buyer. Berry’s decision to accept or reject any P.O. shall be based on certain factors, including but not limited to: **(i)** Berry being satisfied of Buyer’s credit standing; **(ii)** Buyer’s requested delivery date or raw material availability; and **(iii)** any minimum order quantities requirements of Berry. Berry also reserves the right to amend the P.O. if required by any applicable statutory or regulatory requirement. Buyer cannot cancel a Contract without Berry’s prior written approval. A Contract is not cancellable by Buyer in any case once Goods have been manufactured or raw materials for the manufacturing of the ordered Goods are purchased by Berry.

**2. Delivery and Return.** Any dates and/or times specified or confirmed by Berry for manufacture, despatch and/or delivery of the Goods are estimates only and are not guaranteed. Time for delivery is not of the essence. Any delivery date stated in a quotation or otherwise is based on: **(i)** Buyer’s timely compliance with Berry’s credit approval requirements; **(ii)** timely provision of a P.O. by Buyer; and **(iii)** Buyer providing complete specifications as well as any necessary export documents and authorizations; any delay will result in delays in shipment. Subject to Buyer’s prior approval, Berry can: **(i)** increase the quantity of Goods ordered to the nearest standard shipping unit; **(ii)** deliver ordered Goods within a range of plus or minus ten per cent. (10%) or such other standard tolerances as Berry confirms for the concerned Goods; or **(iii)** both. Unless otherwise agreed in writing by Buyer and Berry, Berry shall deliver the Goods to Buyer on an Ex-Works (Incoterms® 2020) basis. If Buyer fails to take delivery of the Goods on the scheduled delivery date, then Berry shall store the Goods until delivery takes place and shall charge Buyer for all related costs and expenses (including insurance). If Buyer has not taken delivery of the Goods within three (3) Business Days (defined as any day except Saturday, Sunday or a national public holiday in the respective countries in which Buyer and Berry operate) after the scheduled delivery date, Berry shall notify Buyer of its failure to collect the Goods and if the Goods are not collected by Buyer after three (3) Business Days following receipt of such notification, Berry may resell or otherwise dispose of part or all of the Goods without any further notice to Buyer and recover from Buyer the difference between the Price and the price Berry receives for re-selling the Goods and any loss and/or additional costs incurred as a result of Buyer’s failure to take delivery. Berry may deliver the Goods by instalments. Should any loss or damage occur to the Goods during transit (where Berry is responsible for the same), Buyer shall notify, without undue delay: **(i)** the carrier of the Goods, requesting that the carrier takes appropriate evidence of any such damage on the freight bill or delivery receipt, provided it is reasonably possible to do so. Buyer shall provide such evidence to Berry in any manner so requested by Berry; and **(ii)** Berry, in writing. Pallets or other re-usable packaging used in the delivery of Goods shall be returned by Buyer and at Buyer’s cost as soon as possible after use to Berry’s carrier in a condition no worse than they were received at the time of delivery. Any return of Goods other than for alleged defects or non-conformities must be approved in advance in writing by Berry (at Berry’s sole discretion) and if approved, subject to such additional conditions as Berry may specify, including without limitation as to timing and the payment of re-stocking and transport charges by Buyer. Unless other terms are stated to apply, all credits issued for returned Goods (other than defective or non-conform Goods) expire one hundred and eighty (180) calendar days after issuance.

**3. Inventory.** If Berry has agreed to retain an inventory or safety stock of Goods, Berry’s obligation to produce Goods for such inventory or stockholding shall be subject to Buyer’s continued compliance with all Contracts, including timely payment and, if separately agreed in writing, communication of an accurate forecast. If any Goods are maintained in inventory/stock for more than ninety (90) calendar days, Berry shall notify Buyer in writing and Buyer must, within ten (10) Business Days thereafter, either purchase such Goods or order the Goods scrapped and pay the purchase price as if such Goods had been purchased (and Berry will retain the scrap) and, in such cases, payment will be due immediately at the end of the ninety (90) calendar days’ period without regard to Buyer’s payment terms or standard payment terms. If Buyer does not respond to Berry’s notification within the ten (10) Business Days’ period specified in this Clause 3, Buyer will be deemed to have given the order to Berry to scrap the Goods.

**4. Price.** The price for the Goods under a Contract shall be the price stated in or (as the case may be) calculated in accordance with, Berry’s price list or other pricing for the Goods as confirmed in writing by Berry and unless otherwise agreed shall be the price so determined as at the date of despatch of the Goods (the “**Price**”). Unless otherwise agreed in writing by Berry, the Price excludes VAT or any other applicable tax, duty or levy on the Goods or any component within the Goods which will be charged in addition to the Price at the applicable prevailing rate. Buyer acknowledges that Prices, regardless of the form or the medium in which they are communicated, are effective only for Goods shipped within the time period to which those Prices relate. Without prejudice to the foregoing,

prices in quotations are effective for the specific time period stated in the quotation or, if no time period is stated, thirty (30) calendar days. Berry reserves the right to revise Prices at any time by giving notice to Buyer to take into account inflation and/or any increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, any variation in exchange rates, any request by Buyer to change the delivery date, quantity or type or specification of Goods ordered and/or any delay caused by any instructions of Buyer or failure of Buyer to give Berry adequate or accurate information or instructions.

**5. Payment.** Buyer shall pay each invoice within thirty (30) calendar days of the date of the invoice. Unless Berry has specified in writing that payment in advance is required, invoices will be issued on the date of delivery (or if Buyer refuses or fails to accept delivery, on the original due date for delivery). No early payment discount will be offered, unless otherwise agreed in writing by Berry and Buyer. Payment shall be made in euro (€) to the bank account nominated in writing by Berry. Time of payment is of the essence. Buyer shall pay all amounts due in full and cleared funds without any deduction or withholding and shall not be entitled to assert any credit, set-off or counterclaim against Berry. If, in the opinion of Berry, the credit-worthiness of Buyer deteriorates, Berry may, prior to delivery, require full or partial payment of the Price. Berry may at any time, without limiting any other rights or remedies it may have, set-off from any payment due to Buyer any amount owing to it by Buyer. If Buyer fails to make a payment due to Berry under the Contract by the due date, then, without limiting Berry’s remedies under Clause 19, Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause will accrue each day from the due date at the rate of three (3) times the French statutory interest until actual payment of the overdue amount. In addition, a recovery indemnity of forty (40) euros shall be due.

**6. Printed Goods.** Buyer will supply Berry with any and all reproduction material for labels, decoration or other printed content to be included on the Goods (artwork), including any drawings and other supporting specifications required for the production of the printed Goods. Berry shall be entitled to charge Buyer all costs originating from the production of artwork and plates. Buyer shall be obliged to approve any test imprints of artwork on request from Berry. If no response to any such request is received from Buyer within a reasonable period and in any case within seven (7) calendar days of the request, Berry shall be entitled to proceed on the basis of the test imprint that has been provided. Variation in the colour of the print on Goods that lies within the spectrum considered usual or acceptable by the trade is not to be considered as non-conforming or defective. Where printed content is a machine-readable code or symbol Berry shall print the code or symbol as specified by Buyer in accordance with the generally accepted standards and procedures for the relevant type of printing on the relevant substrate and Buyer shall be responsible for satisfying itself that the code or symbol reads correctly on the equipment to be used by those for whom the code or symbol is intended.

**7. In-Mould-Labelled Packaging (“**IML Goods**”).** For IML Goods that require Berry to separately source labels, Berry’s delivery obligations for such Goods shall be subject to Berry’s purchase and receipt of labels from its supplier. Berry may invoice Buyer separately for labels it requires to purchase for any IML Goods in advance of the delivery of those Goods. If not invoiced earlier or included in the Price of the Goods paid by Buyer, Buyer shall in any case be obliged to pay for labels acquired by Berry for any order of IML Goods no later than six (6) months after the purchase of the relevant labels. Buyer accepts and will meet the costs of label wastage for IML Goods of up to five per cent. (5%) for semi-gloss labels and up to fifteen per cent. (15%) for high-gloss labels. Scrap and any remaining stock of labels may be destroyed by Berry following delivery of the Goods unless otherwise agreed in writing with Buyer.

**8. Moulds.** If the Goods are moulds, then the following shall apply: The Price for moulds includes the costs for one-time sampling, but does not include the costs for testing and processing equipment or for changes initiated by Buyer. Costs for further samplings for which Buyer is responsible shall be borne by Buyer. If a Contract is terminated but the Price for the moulds have not been fully amortized (provided an amortization of the mould Price was agreed in the Contract), Berry shall be entitled to invoice the remaining amortization amount in full immediately. In the event that moulds are in the possession of Berry for the manufacture of Goods for Buyer the following shall apply: In the case of Buyer-owned moulds and/or moulds made available on loan by Buyer to Berry, Berry’s liability with regard to storage and care shall be limited to the same care as Berry’s own assets. Costs for maintenance and insurance of the moulds shall be borne by Buyer. The aforementioned obligations on part of Berry expire if, after termination of the Contract and corresponding request, Buyer does not collect the moulds within a reasonable period. As long as Buyer has not fulfilled its obligations out of or in connection with a Contract in full, Berry shall in any case have the right to retain the moulds.

**9. Sample Goods.** If Berry makes a sample of the Goods available to Buyer on request, the properties of this sample shall not be deemed to be guaranteed or warranted and shall not form part of the Contract nor have any contractual force, unless otherwise expressly agreed in writing by Berry. In any case, Buyer shall be solely responsible for examining the sample of the Goods and carrying out all necessary packaging and suitability tests. Buyer is responsible for deciding on the use of the Goods.

**10. Suitability of the Goods for specific purpose. Restrictions of use.** Save as set out in Clause 13, Goods are sold “as is” and on the condition that Buyer will determine whether such Goods: **(i)** comply with any regulatory requirements applicable to Buyer; and **(ii)** are appropriate for Buyer’s intended use. It is Buyer’s sole responsibility to test and verify the properties of its finished product manufactured with the Goods and to ensure conformity with any law, regulation and/or applicable standards, including but not limited to the EU Medical Device Regulation 2017/745 or national equivalent or any law, regulation and/or applicable standards relating to food contact materials. GOODS ARE NOT INTENDED TO BE

USED: (i) IN ANY NUCLEAR OR RELATED APPLICATIONS; (ii) AS COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS INTENDED FOR SURGICAL IMPLANT INTO THE BODY OR INTENDED TO SUPPORT OR SUSTAIN LIFE; OR (iii) FOR EXTENDED CONTACT WITH HUMAN BODY FLUIDS AND/OR TISSUES, INCLUDING FOR MEDICAL END USES, WITHOUT BERRY'S PRIOR WRITTEN CONSENT.

**11. Traceability.** It is the responsibility of Buyer to ensure that the EAN number or bar code is recorded and stored for the purposes of complying with EU Regulation 1935/2004 and local regulations where applicable. The EAN number or bar code is typically situated on the label which is attached to the delivery pallet or cardboard or other packaging for the Goods.

**12. Risk and Retention of Title.** Risk shall pass to Buyer on delivery or if earlier in accordance with the agreed Incoterms<sup>®</sup>. Berry shall retain ownership and title to the Goods delivered to Buyer until Buyer has made full and final payment of all amounts (including interest, costs and penalties) that it owes to Berry under all Contracts entered into between Berry and Buyer. Buyer may, in the ordinary course of its business, process or, in the event Buyer is a distributor of Berry, sell these Goods owned by Berry. If so, title to the Goods shall pass from Berry to the Buyer immediately before the time at which resale by Buyer occurs.

Until title to the Goods has passed to Buyer, Buyer shall: (i) store the Goods separately from all other goods held by Buyer so that they remain readily identifiable as Berry's property; (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (iii) maintain the Goods in satisfactory condition; (iv) give Berry such information as Berry may reasonably require from time to time relating to the Goods and the ongoing financial position of Buyer; and (v) at its own expense obtain, adequate insurance coverage for the Goods owned by Berry, for the full price of the Goods from the date of delivery. This coverage shall be for loss, theft and any other risks for which insurance is ordinarily obtained in the country in which Buyer has its headquarters/storage warehouse. On Berry's request, Buyer will present Berry with a copy of the insurance policy as well as proof of payment. Where the laws of the country or countries for which the Goods are intended, to which the Goods are sent, or in which Buyer is situated do not acknowledge retention of title in this way or set specific requirements for the validity or vesting of this right, in whole or in part, Buyer shall inform Berry of the same before the delivery of the Goods. Buyer shall, at Berry's request, co-operate in satisfying these requirements or - at Berry's sole discretion and on behalf of Berry - vest in the Goods as well as in any Buyer's material that Berry has in its possession (whether delivered yet or not) a security right that shall be similar in effect to retention of title and that shall be effective against third parties. By entering into a Contract, Buyer grants Berry irrevocable authority to take any measures necessary to affect the above. As long as any Goods are subject to retention of title or Buyer is subject to any other obligation to vest or to arrange for the vesting of a similar security right on the Goods pursuant to this provision of the GSTC, Buyer shall not grant a pledge on the Goods delivered by Berry or encumber them in any way. Berry reserves the right to repossess and resell any Goods to which it has retained title and Berry's consent to Buyer's possession of the Goods and any right Buyer may have to possession of the Goods shall terminate immediately if: (i) any sum owed by Buyer to Berry is not paid to Berry by the due date; or (ii) any circumstances occur that would entitle Berry to terminate the Contract in accordance with Clause 19 of these GTSC. Buyer hereby grants an irrevocable right and licence to Berry and its employees, agents and subcontractors to enter upon all or any of Buyer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or repossessing Goods to which it has retained title.

**13. Warranties.** Berry warrants that: (i) it has good title to sell the Goods at the time when title passes to Buyer in accordance with these GSTC; (ii) on delivery the Goods shall conform in all material respects with Berry's published specifications within stated tolerances or with Buyer's specifications if previously agreed in writing by Berry (the "Specifications"); (iii) it will perform any services provided with reasonable care, skill and diligence and in accordance with good industry practice. Notwithstanding the foregoing, it is Buyer's sole responsibility to ensure that such Specifications and tolerances meet the requirements of Buyer and any third-party buyer, regardless of Berry's knowledge of such requirements.

Buyer shall have no recourse against Berry for any alleged non-conforming Goods: (i) in any event, if Buyer does not notify Berry of the defect or the non-conformity within ten (10) Business Days after the date of delivery or, if the defect or the non-conformity would not be apparent on reasonable inspection, within ten (10) Business Days after discovery of the same, but in any case within one (1) year of delivery; and/or (ii) in any of the following circumstances: if (a) Buyer makes any further use of the Goods after giving notice in accordance with this Clause 13; or (b) the defect or non-conformity arises because of any act or omission by Buyer, its representatives or any other third party (including any unauthorised alteration or repair of the Goods, a failure to follow oral or written instructions as to storage, installation, use and maintenance of the Goods (or good trade practice) or fair wear and tear, willful damage, negligence or abnormal storage or working conditions); or (c) the defect or non-conformity arises as a result of Berry following any drawing, design or specification supplied by Buyer; or (d) Buyer used the Goods in a manner not in accordance with Clause 10 of these GTCS.

In the event of third-party infringement actions, including, but not limited to the infringement of any copyrights, patents, trade secrets or other intellectual property rights of third parties, Buyer shall immediately notify Berry in writing. Buyer expressly agrees to allow Berry to choose, initially, between the following two solutions: (i) obtaining rights allowing Buyer to continue to use the Goods peacefully; or (ii) providing goods and/or components of goods that are substitutable for the Goods and/or their components. If Berry is unable to provide Buyer with at least one of these two solutions, Berry shall refund to Buyer the full price of the Goods in accordance with applicable law. To the extent permitted by applicable law, Buyer expressly agrees that Berry shall only be liable for damages and costs determined by a court decision that has become final.

In respect of any breach of the warranties set out in (ii) and (iii) of the first paragraph of this Clause 13, Berry shall subject to the conditions stated above, at its election: (i) repair the Goods; or (ii) supply replacement Goods; or (iii) grant to Buyer a credit equal to the Price (excluding value added or other taxes), to the exclusions of any other obligation or liability towards Buyer; provided in each case that Buyer, upon request, returns the relevant Goods unaltered to Berry for inspection as soon as possible and at its own risk and expense.

The foregoing warranties are exclusive and in lieu of any other warranty, written or oral, express or implied, to the fullest extent permitted by law.

**14. Alternative Resin. Recyclate Material.** Berry may use a suitable alternative resin for Goods to reduce the risk of disruption in supply of Goods as a replacement or substitution resin to any resin that is described in the Specifications, to the extent it does not impact the characteristics of the Goods. Berry may use recycled raw materials which may be subject to greater fluctuations in surface quality, colour, purity, odour and physical or chemical properties from batch to batch.

**15. Liability.** The restrictions on liability in this Clause 15 apply to every liability arising under or in connection with the Contract.

(a) Subject to (c) below, in no event shall Berry be liable to Buyer, (even if advised of the possibility of such loss or damage) for:

- (i) any loss of profits, loss of sales or business, loss of agreements or contracts, or other economic loss (in each case whether direct or indirect);
- (ii) loss of anticipated savings (whether direct or indirect);
- (iii) loss of use or corruption of software, data or information (whether direct or indirect);
- (iv) loss of or damage to goodwill (whether direct or indirect); or
- (v) any indirect loss or damage arising under or in connection with a Contract.

(b) Subject to Clause 15(a) and Clause 15(c) below, the total liability of Berry, its affiliates and it and its affiliates' directors, officers, employees, agents and contractors to Buyer in respect of any and all losses arising under or in connection with a Contract, shall not exceed the Price paid or payable by Buyer to Berry under that Contract.

(c) Nothing in these GSTC shall limit or exclude Berry's liability for gross negligence or wilful misconduct, death or personal injury caused by its negligence or any matter in respect of which it would be unlawful for Berry to exclude or restrict its liability.

This Clause 15 shall survive termination of the Contract.

**16. Indemnity.** Buyer shall hold harmless, defend and indemnify Berry, its affiliates and it and its affiliates' directors, officers, employees, agents and contractors in full against all claims, losses, liabilities, demands, damages, costs and expenses (including, without limitation, legal and other professional fees and expenses) arising as a result of or in connection with: (i) Buyer's use of the Goods, including without limitation in respect of any claim by any third party to whom Buyer has sold or otherwise transferred the Goods; or (ii) any infringement or alleged infringement by Buyer of any copyrights, patents, trade secrets or other intellectual property rights of third parties or of Berry; or (iii) Buyer's breach of a Contract.

**17. Compliance with Anti-Corruption and Export Laws.** Buyer represents and warrants that it shall at all times comply with all applicable laws, regulations, codes, rules, ordinances, judgments, orders and decrees (all together, the "Laws"). In particular, Buyer agrees to comply fully with: (i) all applicable Laws relating to anti-bribery and anti-corruption and, more specifically, abide by the standards of conduct set forth in the French Transparency, Fight Against Corruption and Modernization of Economic Life Act ("Sapin II") N° 2016-1691 of December, 9 2016, the United States Foreign Corrupt Practices Act of 1977, the United Kingdom Bribery Act of 2010 and any other applicable anti-corruption and/or anti-money laundering Laws (all together the "Anti-Corruption Laws"); and (ii) all relevant EU (European union) and national Laws on export, trade restriction Laws of the United States and any applicable national Laws ("Export Laws") in force at the relevant time. Buyer shall not, in respect of the Goods: (i) export, re-export, trans-ship, or otherwise transfer, directly or indirectly, in violation of Export Laws; or (ii) use the same for any purposes prohibited by the Export Laws (including, without limitation, nuclear, chemical, or biological weapons proliferation). Upon request, Buyer shall promptly provide Berry with all and any information reasonably requested in order to confirm compliance with the requirements of this Clause 17.

**18. Privacy and Security.** Buyer will fully comply with all applicable privacy and security Laws. To the extent applicable, Buyer warrants, represents and undertakes if it processes Personal Data on Berry's behalf, that: (i) it will notify Berry immediately, and in any event within twenty four (24) hours of becoming aware, of any actual or suspected Personal Data Breach; (ii) it will act only upon Berry's instructions with respect to Personal Data; (iii) it has in place appropriate measures against the unauthorized, unlawful or accidental processing, access, loss or destruction of such Personal Data; and (iv) it will not, without Berry's permission, transmit Personal Data outside of the country wherein the Berry entity with whom Buyer is contracting is located. For purposes of this Clause 18, applicable privacy and security laws mean and include all applicable Laws protecting the personal data and privacy of natural persons, including in particular, the European General Data Protection Regulation 2016/679 ("GDPR") and its implementing or equivalent national data protection laws as well as any subsequent applicable legislation that may amend or replace, re-enact or consolidate any of them; and the terms "Personal Data" and "Personal Data Breach" have the same meaning as under the GDPR or other applicable privacy and security laws.

**19. Termination. Events of default.** Berry shall be entitled, at any time by giving reasonable written notice to Buyer and without prejudice to its other rights and remedies to suspend any deliveries of Goods and/or terminate any order for Goods and/or terminate a Contract forthwith if: (i) Buyer fails to pay to Berry on the due date any amount payable under a Contract; (ii) Buyer commits a material breach of a Contract; (iii) Berry

believes that any of the foregoing events in sub-clauses (i) to (ii) might occur. **Events of insolvency.** If Buyer is not a company under French law, Berry shall be entitled, at any time by giving reasonable written notice to Buyer and without prejudice to its other rights and remedies to suspend any deliveries of Goods and/or terminate any order of Goods and/or terminate a Contract forthwith if Buyer (i) becomes insolvent or bankrupt, or enters into liquidation or appoints a liquidator, receiver, manager, administrator or administrative receiver or equivalent officer in any jurisdiction in respect of any assets or undertaking of Buyer or any of its affiliates enters into an arrangement or composition with its creditors or any similar appointment, arrangement or composition is made under any applicable law, or (ii) Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy, (iii) Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business. If Buyer is a company incorporated in France and is subject to an insolvency procedure, Berry shall give formal notice to the court appointed administrator to take a decision on the continuation of the Contract. If one (1) month after the formal notice Berry has not received any response from the court appointed administrator, the Contract will be automatically terminated, unless an extension is granted by the bankruptcy judge at the administrator's request. In the latter case, the Contract will be automatically terminated at the end of the extension period.

Provisions of these GSTC which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination. Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. Upon termination for any reason, all amounts owing by Buyer to Berry, whether under a Contract or for any other reason, shall become immediately due and payable.

**20. Confidentiality.** Buyer shall keep in strict confidence all information that is designated as confidential or that reasonably should be understood as confidential given the nature of the information and the circumstances of disclosure (including without limitation all technical or commercial data, intellectual property, know-how, specifications, inventions, technology, processes or initiatives) disclosed by or relating to Berry, its affiliates or their businesses or activities and of which Buyer becomes aware ("**Information**"). Any information shall not be considered Information if (i) it is or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by Buyer or its representatives in breach of this provision; (ii) it was available to Buyer on a non-confidential basis prior to disclosure by Berry; (iii) it was, is, or becomes available to Buyer on a non-confidential basis from a person who, to Buyer's knowledge, is not under any confidentiality obligation in respect of that information; or (iv) it was lawfully in the possession of Buyer before the information was disclosed by Berry. Buyer shall only use the Information in performing its obligations under a Contract. Buyer may disclose the Information to (i) its officers, representatives, contractors, subcontractors, advisors and employees on a need-to-know basis only, subject to ensuring that such officers and employees are bound by similar obligations of confidentiality; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Ownership of the Information shall remain vested in Berry and Buyer shall not use the Information in any way so as to gain commercial advantage over Berry (including without limitation through abuse of Berry's intellectual property rights).

**21. Intellectual Property.** "**Intellectual Property Rights**" means all industrial and other intellectual property rights comprising or relating to: (i) patents; and utility models (ii) trademarks; (iii) inventions, discoveries, concepts, ideas, information, processes, formula; (iv) works of authorship, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, data, data files, records and documentation; (v) trade secrets; (vi) know how and (vii) all other industrial and intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to any of the foregoing, however arising. Buyer acknowledges and agrees that: (i) except to the extent provided in a separate written agreement between Buyer and Berry, Berry or its licensors will retain all Intellectual Property Rights used to create, embodied in, used in, and otherwise relating to the Goods; (ii) any and all Berry's Intellectual Property Rights are the sole and exclusive property of Berry or its licensors; and (iii) Buyer shall not acquire any ownership interest in any of Berry's Intellectual Property Rights under any Contract. Buyer shall not engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Goods. Buyer acknowledges and agrees that, except to the extent provided in a separate written agreement between Buyer and Berry, all Tooling used to manufacture the Goods is owned by Berry ("**Berry Tooling**"). Buyer has no right, title, or interest in or to any of the Berry Tooling. "**Tooling**" means, collectively, all tooling, test and assembly fixtures, gauges, patterns, moulds, documentation (including engineering specifications and test reports) used by Berry in connection with its manufacture and sale of the Goods, together with any accessions, attachments, parts, machinery, accessories, substitutions, replacements and appurtenances thereto.

**22. Force Majeure.** Delay in performance or failure to perform an obligation under a Contract (except as to any payment obligation) shall be excused to the extent caused by circumstances beyond the reasonable control of the party claiming such excuse, which could not reasonably be foreseen at the time the Contract was concluded and the effects of which cannot be avoided by appropriate measures (a "**Force Majeure Event**") (including without limitation natural disasters, war, armed conflict, terrorist attacks, rebellion, nuclear disaster, volcano eruptions, fires, lock-outs, riots, strikes or other labour disputes, unusually severe weather, transportation problems, energy shortages, raw material shortages, power outages, accident, explosion, flood, epidemic, pandemic, machine breakdown, inability to obtain supplies or governmental actions). The party claiming such circumstances shall give written notice to the other party as soon as reasonably practicable giving its best estimate of the expected period of delay. In the case of a Force Majeure Event, Berry may in its absolute discretion terminate the Contract or cancel delivery of

Goods to Buyer or may, with the agreement of Buyer, deliver Goods at an agreed rate of delivery commencing after any suspension of deliveries. If due to a Force Majeure Event Berry has insufficient stocks to meet all of its commitments, Berry may apportion available stocks between its customers at its absolute discretion.

**23. Governing Law and Jurisdiction.** The construction, validity, performance or enforceability of any Contract or these GSTC and any dispute or claim arising out of or in connection thereof (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of France. The applicability of the U.N. Convention on Contracts for the International Sale of Goods of 1980 is explicitly excluded. Buyer and Berry irrevocably submit to the non-exclusive jurisdiction of the competent courts at the registered office of Berry.

**24. Miscellaneous. - Amending General Sales Terms and Conditions.** Berry may unilaterally amend the terms and conditions stipulated herein either totally or partially, publishing any change on its website and notifying the change to Buyer. No such amendments shall affect the terms of any Contract already made. - **Whole Agreement, No Amendment.** The Contract constitutes the entire agreement between Buyer and Berry relating to the subject matter thereof. Buyer acknowledges that it has not relied on any statement, assurance, warranty, promise or representation made or given by or on behalf of Berry which is not set out in the Contract. No variation of the Contract or any order for Goods shall be effective unless it is in writing and signed by Buyer and Berry (or their authorised representatives). - **Waiver.** A waiver of any right or remedy under a Contract is only effective if given in writing, and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. - **Third Party Rights.** No one other than Berry and Buyer (and their permitted assignees) shall have any right to enforce any of the terms of these GSTC or of a Contract. - **Status.** Nothing in a Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between Buyer and Berry, nor constitute any party the agent of another party for any purpose. - **Assignment and Subcontracting.** Buyer shall not, without the prior written consent of Berry, assign, transfer, charge or subcontract a Contract or any of its rights or obligations under a Contract or purport to do any of the same. Berry may assign, transfer, charge or subcontract a Contract or any of its rights or obligations under a Contract to any person. - **Severance.** If any court or competent authority finds that any provision of a Contract or of these GSTC (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of the Contract or of these GSTC shall not be affected. If any invalid, unenforceable or illegal provision of a Contract or of these GSTC would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable. - **Governing Language.** If these GSTC are translated into any language other than English and there is any conflict or ambiguity between the English version and the other version(s), the English version shall prevail. - **Notices.** Any notice or other communication given under or in connection with a Contract shall be in writing, addressed to that party at its registered office or principal place of business (or such other address as that party may nominate in writing in accordance with this Clause 24) and shall be either: (i) delivered personally; or (ii) sent by pre-paid first-class post; or (iii) sent by confirmed email. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to above; if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting; if sent by confirmed email, during normal business hours of the recipient within twenty-four (24) hours from mailing. The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.