

NUALIGHT TERMS AND CONDITIONS OF PURCHASE

1. ENTIRE AGREEMENT

1.1 These terms and conditions, together with the written information contained on the face of this purchase order (the “**Order**”) shall constitute the entire contract (the “**Agreement**”) between the Seller and Nualight with respect to the purchase and sale of the goods set out in the Order (the “**Goods**”), and shall prevail over and supersede all prior agreements, understandings, statements and communications between the parties with respect to any Goods. Without prejudice to the generality of the foregoing, these terms and conditions shall apply to the exclusion of any terms and conditions which the Seller may purport to apply at any time, whether contained in any acknowledgement of the Order or otherwise.

1.2 Each of these terms and conditions and the Order is an essential part of the Agreement and a requirement occurring in one is as binding as though occurring in all. These terms and conditions and the Order shall be construed as mutually explanatory of one another. In the event of any conflict or inconsistency between these terms and conditions and the Order, interpretation shall be made by referring to these terms and conditions and the Order in the following order of precedence: (a) the Order; and (b) these terms and conditions.

1.3 In any circumstances where the Seller has not previously formally accepted these terms and conditions, acceptance of this purchase order or dispatch or delivery of Goods by the Seller to Nualight shall be deemed conclusive evidence of the Seller’s acceptance of these terms and conditions.

1.4 The quantity and description of any Goods ordered shall be as set out in the Order. In addition, the Seller shall ensure that Goods supplied conform to any description given by the Seller and any drawings or specifications provided by Nualight.

1.5 For the avoidance of doubt, the Seller shall be obliged to comply with any additional terms set out in the Order.

1.6 It is specifically understood that the Agreement shall be interpreted as a non-exclusive agreement. Accordingly, subject to the requirements of Clause 17.4, either party shall be free to enter into agreement for goods of a similar nature with any other party without limitation.

2. PRICE AND PAYMENT

2.1 The price for any Goods ordered by Nualight shall be the price set out in the Order. If no price is specified therein, the price of the Goods shall be the price last quoted by the Seller or that last paid by Nualight to the Seller, or the prevailing market price, whichever of these prices is the lower.

2.2 Unless otherwise stipulated in the Order, all prices stipulated in the Order are exclusive of VAT but are inclusive of all other taxes and other impositions, costs, charges and expenses chargeable in respect of the relevant Goods upon the Seller or any other person before delivery.

2.3 All prices stipulated in the Order are fixed and may not be increased without the prior written approval of Nualight. Unless stated otherwise, the Order sets out an exhaustive list of payments due from Nualight to the Seller under the Agreement.

2.4 The payment terms for any Goods ordered by Nualight shall be set out in the Order. If no terms are specified, payment of the price and any VAT shall be due within 45 days from the end of the month in which the invoice is received provided however that if Nualight disputes any portion of the invoice, Nualight shall pay only the undisputed portion of such invoice and shall notify the Seller of the amount in dispute and the

basis on which such amounts are disputed. The parties agree that Nualight will not be liable to pay interest or any invoice which is overdue as a result of dispute.

2.5 All invoices for amounts stated as payable by Nualight to the Seller shall be in such form, and accompanied by such information, as may reasonably be requested by Nualight from time to time for the purpose of permitting Nualight to verify the amounts charged in the invoice.

2.6 Nualight shall be entitled to set-off any matured obligation owed by the Seller to Nualight under the Agreement (including, without limitation, the amount of any defects in the Goods, and/or the amount of any claim or loss and/or expense of any damage which has been incurred (or is likely to be incurred) by Nualight by reason of any breach of, or failure to observe the provisions of the Agreement) against any obligation (whether matured or unmatured) owed by Nualight to the Seller. If an obligation is unascertained or unliquidated, Nualight may in good faith estimate that obligation and set off in respect of the estimate subject to the relevant party accounting to the other when the obligation is ascertained or liquidated. Nualight will not be obligated to pay any amounts to the Seller under the Agreement so long as any sums which are then due by the Seller to Nualight under the Agreement remain unpaid, and any such amounts which otherwise would be due will fall due from Nualight only if and when the Seller has paid all such sums.

3. FORECASTS

3.1 During the term of the Agreement, Nualight may give the Seller forecasts of the Goods it expects to purchase from time to time.

3.2 Forecasts shall be given in writing or, if given orally, shall be confirmed in writing within two business days.

3.3 Forecasts provided under this Clause 3 shall not constitute an order for Goods pursuant to the Agreement, are non-binding and are not intended to create any legal relations between Nualight and the Seller but rather to give an indication of Nualight’s anticipated requirements for the Goods.

3.4 If the Seller anticipates that it will be unable to meet Nualight’s forecasted requirements provided in accordance with this Clause 3 it shall inform Nualight as soon as practicable.

4. VARIATION AND CANCELLATION

4.1 Any variation of these terms and conditions shall be inapplicable unless agreed to in writing by Nualight.

4.2 Nualight may at any time before dispatch by the Seller of any Goods make changes in drawings or specifications, require additional work or direct the omission of work covered by the Order. If such changes cause a change in the cost to the Seller of manufacturing the affected Goods or the delivery date for the Goods in any way, then the Seller shall give written notice to Nualight as soon as practicable but in any event not later than 14 days after receipt of a change request from Nualight. Any increase in cost or change in the delivery dates shall either be approved by Nualight within 14 days of receipt of the Seller’s notice or Nualight will give the Seller other instructions with respect to such change request. If the Seller fails to give such notice the Seller shall be solely responsible for any increase in cost or delay. Any increase or decrease to the price of the Goods owing to any addition or omission of work relating to the Order shall be ascertained by Nualight and agreed by the Seller on a reasonable basis commensurate with the price set out in

the Order. For the avoidance of doubt, the omission of work relating to the Order shall not entitle the Seller to loss of anticipated profit on such omitted portion of the Order price.

4.3 In the event of changes to the delivery dates caused by Nualight, Nualight shall grant an extension of time (where appropriate), provided the Seller's written notification, complete with all details of the occurrence of such delay has been notified to Nualight within a reasonable time and in any event within 10 days after the Seller became aware or ought to have become aware of such occurrence. Nualight shall make a reasonable assessment of any reasonable costs as may be associated with such delay.

4.4 Nualight reserves the right to cancel any order for any reason at any time provided, however, that if such cancellation is solely for Nualight's convenience and is not due to any default of the Seller Nualight agrees to pay and the Seller agrees to accept as full and final settlement a sum equal to the cost the Seller has incurred and can substantiate up to the date of cancellation for materials, labour and overheads which the Seller cannot reasonably use elsewhere, plus a sum equal to such percentage of the costs aforesaid as would be equal to the percentage of the price for the relevant Goods which represents the Seller's profit margin. All materials for which Nualight is obliged to pay as aforesaid shall be Nualight's property and shall be delivered promptly to Nualight by the Seller.

5. INSPECTION

5.1 At any time, prior to any dispatch of Goods to it, Nualight (or any other person whom it may nominate) shall be entitled to inspect, examine and test the Goods at the Seller's premises and, if any Goods or any part of them are being manufactured on other premises, the Seller shall obtain for Nualight permission to carry out a like inspection on such premises.

5.2 The Seller shall make available to Nualight (or its nominee) (at the Seller's cost unless otherwise agreed in writing), all necessary resources making it possible for Nualight to check the conformity of the Goods to the Order.

5.3 The Seller must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in its supply.

5.4 Any inspection, examination or test required or carried out by Nualight shall not in any way affect the Seller's warranties or reduce or relieve the Seller of its obligations under the Agreement or constitute a waiver by Nualight and shall be without prejudice to any of Nualight's other rights under the Agreement. Without prejudice to the generality of the foregoing, Nualight shall be entitled to inspect the Goods upon their arrival at the final destination, to issue a refusal at any of these times, or to express any reservations. The Seller's responsibility shall not be reduced or relieved by any observations that Nualight may make regarding instructions detailed in the Seller's designs or drawings and concerning the nature and quality of the materials used.

5.5 All tests necessary for inspection, conforming to the stipulations of the Order, will be carried out by the Seller (at the Seller's cost unless otherwise agreed in writing by the parties) and submitted to Nualight for approval. Any requests for intervention, detailed in Nualight's specifications that the Seller may make vis-à-vis inspection agencies, shall be submitted to Nualight and the certificates drawn up following these interventions will be sent to Nualight. The Seller shall carry out all tests not detailed in Nualight's specifications, which may be required by any authority or administration concerning the Goods.

5.6 If further tests are judged necessary by Nualight or the Seller, these will be carried out at the advance cost of the Seller (unless otherwise agreed in writing by the parties). The parties agree that at the end of these additional tests they will decide as quickly as possible the split of costs between themselves taking into account the costs advanced by the Seller together with any other provisions of the specification(s) included as part of the Order.

5.7 The Seller must be able to prove that the methods and equipment used for any tests make it possible to guarantee the precision and reliability necessary for the tests, measurements and inspections.

5.8 The Seller shall notify Nualight twenty (20) days before the tests referred to in sub-clause 5.5 above are carried out in order to enable Nualight to appoint their representatives in sufficient time, if Nualight should decide to be present for these tests.

5.9 If Nualight has not nominated its representatives by the date indicated for these inspections by the Seller, the Seller may take all measures that he considers necessary to continue the execution of the Order.

5.10 Any inspections or tests under this Clause 5 shall not be grounds for delay in the normal progress of the Order.

5.11 Whether or not the tests have been carried out in Nualight's presence, the test certificate and acceptance documents for the main items and raw materials will be supplied to Nualight in accordance with the terms detailed on the Order.

6. AUDIT RIGHTS

6.1 The Seller shall create and maintain all records:

- (a) required by the Agreement and applicable law that relate to the Agreement and to supply of Goods by the Seller pursuant to the Agreement;
- (b) sufficient to demonstrate that any and all amounts invoiced to Nualight under the Agreement are accurate and proper in both kind and amount;
- (c) sufficient to demonstrate the accuracy of any reports submitted to Nualight under the Agreement; and
- (d) sufficient to enable Nualight to comply with applicable laws relating in particular to labour, environmental, safety and security issues and relevant applicable regulations, (together referred to as the "Records").

6.2 In creating and maintaining the Records, the Seller shall employ standards and practices that are no less rigorous than those employed by prudent, well managed enterprises within the relevant jurisdiction that manufacture or supply goods similar to those that the Seller provides under the Agreement.

6.3 The Seller shall maintain all of the Records listed above for the longest of the following retention periods that applies:

- (a) any period prescribed by applicable law or stated expressly in the Agreement in another section;
- (b) for Records related to an invoice, for three (3) years after the Seller receives timely payment in full of all compensation for the Goods to which the invoice relates;
- (c) for Records related to reports submitted to Nualight, for three (3) years after the report is submitted;
- (d) for all Records not addressed by one of the above, for three (3) years after the termination of the Agreement.

6.4 If payment by Nualight is exclusively on a reimbursable cost basis or if required by applicable law, the Seller will allow Nualight to inspect

(and, upon request, the Seller will furnish copies of) Records the Seller is required to create or maintain under the Agreement but only for the purposes of evaluating and verifying reimbursable costs:

- (a) in compliance with the requirements of the Agreement;
- (b) in compliance with applicable law and applicable regulations;
- (c) the accuracy and propriety of any invoice submitted to Nualight by the Seller; and (d) the accuracy of any reports submitted to Nualight.

6.5 Subject to giving the Seller 8 business days' advance written notice, Nualight may enter and inspect during regular business hours only those premises designated by the Seller where Records will be made available to Nualight or where the Goods are manufactured and shall comply with the Seller's security and access rules and procedures, a copy of which the Seller will provide to Nualight prior to such inspection, to accomplish the evaluations and verifications described in sub-clause 6.4 above. The Seller will cooperate with Nualight and provide reasonable assistance to Nualight to facilitate the evaluation and inspection, and Nualight will reasonably cooperate with the Seller to mitigate disruption to the Seller's operations. In the event that Records are maintained, Goods are manufactured, or Nualight's property is kept at premises that the Seller does not control, the Seller shall use its reasonable endeavours to secure rights of entry and inspection sufficient to allow Nualight to exercise its rights under this Clause 6.

6.6 Nualight, its agents or its designees may exercise Nualight's rights of entrance and inspection under this Clause 6 and shall comply with the Seller's security and access rules and procedures. Persons that Nualight may designate include Nualight's independent auditors. During such inspection, Nualight's agents or its designees shall treat any information, data, or documents that they may inadvertently have access to relating to the Seller, its clients or third parties as strictly confidential.

6.7 For Records generated by electronic databases, spreadsheets, programs or the like, Nualight's rights to access and inspection under this Clause 6 extend to the database, spreadsheet, programs or the like subject to complying with the Seller's IT security rules, a copy of which the Seller will provide Nualight prior to such inspection, as well as the Record itself.

6.8 In the event that Nualight determines that it has paid the Seller more than the Seller was entitled to be paid, Nualight will give the Seller written notice of the overpayment with supporting evidence. In the event the Seller does not dispute the notice of overpayment, the Seller shall promptly refund overpayments.

6.9 Nualight will pay its own expenses for any inspection of the Records of the Seller's premises. However, if in any audit, Nualight determines that material issues exist that result, resulted or will result in an overcharge of 2% or more of the invoiced amount for the audited Goods, the Seller will, within thirty (30) days, reimburse Nualight for its out-of-pocket costs incurred in conducting the audit with such costs not to exceed €15,000. This sub-clause 6.9 is intended as a fair allocation of audit expenses, not as damages or a penalty.

6.10 Records required by this Clause may also fall within the definition of work product, deliverables or the Seller's intellectual capital. The property rights to such Records are established elsewhere in the Agreement, not this Clause 6. The Records may also contain Nualight's Confidential Information; if so, the Seller must satisfy the obligations under Clause 13 (*confidentiality*), in addition to the obligations of this Clause.6

6.11 The Seller's obligations to maintain Records under this Clause 6 are extinguished to the extent that the Seller properly satisfies an obligation elsewhere in the Agreement to dispose of such Records or to deliver such Records to Nualight or otherwise properly disposes of them in accordance with other provisions of the Agreement.

6.12 References to the obligations of the "Seller" throughout this Clause 6 shall be deemed to include the Seller's vendors and suppliers. Nualight shall have the same right to access and inspection of the Records and premises of such vendors and suppliers in respect of matters relating to the Goods, as between the Nualight and the Seller. The Seller shall procure that such right of access and inspection is included in any contracts of the Seller with its vendors / suppliers in relation to the Goods.

7. DELIVERY

7.1 The Seller must deliver the Goods ordered on the due date or dates specified in the Order (or such other delivery date as may be specified by Nualight) to such place as the Order may specify and otherwise upon the terms and conditions set out in the Order. For the purpose of delivery of the Goods, time is of the essence.

7.2 If the Seller fails to deliver the Goods to Nualight on or before the due date for delivery as specified in the Order (or, where Nualight requests a change to the specifications of Good after the date of the Order, such later delivery date as may be specified by Nualight in accordance with sub-clause 4.3), Nualight may (without prejudice to any other right it may have under the terms of this contract or otherwise) cancel the order.

7.3 Nualight may postpone delivery by reasonable notice given to the Seller at any time before delivery. Without prejudice to the generality of the foregoing, in the event of an industrial dispute or other action preventing Nualight from operating in its normal course of business, Nualight reserves the right to suspend acceptance of deliveries of Goods until the dispute or other action has ceased.

7.4 The Seller shall box, crate or package as necessary all Goods for shipment so as to ensure that they are delivered in the condition warranted and represented by the Seller in Clause 12 without charge, unless otherwise specified in the Order.

7.5 The Seller shall provide Nualight with its invoice for the Goods and an advice of despatch stating Nualight's purchase order number, and carrier, routing and tracking information for the shipment for each delivery of Goods on the same day of such delivery.

8. ACCEPTANCE

8.1 Nualight shall not be deemed to have accepted any Goods until after Nualight has actually inspected the Goods at its own premises and carried out all tests which it may, in its absolute discretion, deem appropriate to ascertain that the Goods are in accordance with the Agreement, notwithstanding any prior acknowledgement of receipt or prior payment. Nualight may reject Goods which are not in accordance with the Agreement. In those circumstances, Nualight shall be entitled to return any such Goods to the Seller at the Seller's cost and risk to the fullest extent permitted by law.

8.2 Breakages or damaged packages will not be accepted by Nualight.

9. TRANSPORTATION AND CLAIMS

9.1 The Seller is solely responsible for compliance with all laws relating to the labelling, packaging and carriage of the Goods until delivery and for ensuring that such labelling, packaging, carriage and delivery are made in accordance with the best current industry practice

and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the Seller shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.

9.2 The Seller agrees to indemnify and hold harmless Nualight and the employees and sub-contractors of Nualight from and against any and all Losses arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with

- (a) the manufacture of the Goods and/or
 - (b) any breach by the Seller of the provisions of sub-clause 9.1,
- except for such Losses that have been caused solely and exclusively by the negligence of Nualight or the employees or sub-contractors of Nualight.

10. RISK AND TITLE

10.1 The risk in Goods shall remain with the Seller until delivery accordance with Clause 7.

10.2 Title to the Goods shall pass to Nualight on payment for the Goods by Nualight.

11. INTELLECTUAL PROPERTY

11.1 All Nualight Materials are and shall remain the exclusive property of Nualight. The parties acknowledge and agree that all Intellectual Property Rights in and to all Nualight Materials are vested and shall remain vested in Nualight.

11.2 The Seller shall not use Nualight Materials for any other purpose other than the supply of Goods pursuant to the Agreement. The Seller acknowledges and agrees that no licence is granted to the Seller in respect of Nualight Materials other than expressly granted by the provisions of the Agreement.

11.3 The Seller shall return (at its own cost) all Nualight Materials to Nualight at any time upon receipt of a request from Nualight.

11.4 All Intellectual Property rights in and to Seller Materials shall remain vested in the Seller as the case may be, but the Seller hereby grants to Nualight (for its own benefit and as trustee for the benefit of its Affiliates) an irrevocable worldwide royalty free licence to use the Seller Materials in connection with the Agreement.

11.5 The Seller agrees to indemnify and hold harmless Nualight (on demand) from and against any and all Losses which may at any time be suffered or incurred by Nualight as a consequence of any of the Goods or any design, article or material in any of the Goods or their operation or use constituting an infringement of any Intellectual Property Rights of any third party to the extent such infringement was not caused by Nualight Materials.

12. WARRANTIES

12.1 The Seller represents and warrants to Nualight that on an ongoing basis:

- (a) it has examined any specification and/or drawings and/or other documents provided by Nualight and has satisfied itself that same are suitable to enable the Seller to proceed with the manufacture of the Goods;
- (b) all Goods delivered to Nualight shall conform to any specification and/or drawing provided by Nualight and to any description given by the Seller in respect of the Goods concerned;
- (c) any Goods delivered to Nualight shall be of merchantable quality, free from defects in materials and workmanship and shall, unless a different period is specified in the Order, remain fit for use in their

intended purpose for the period of eighteen months commencing on the date on which the Goods concerned are delivered;

(d) if a sample of the Goods was provided to Nualight before delivery, the bulk of the Goods will correspond with the sample; and

(e) the Goods when delivered will comply with all applicable laws.

12.2 In the event of any breach of these warranties or representations, and in addition to and without prejudice to any other rights which Nualight may have, Nualight may:

(a) require the Seller to remedy the defect(s) in the Goods and any damage to other property arising directly or indirectly out of any defect(s) in the Goods in which event the Seller shall proceed to carry out such remedial works with all possible speed and/or supply replacement goods; or

(b) arrange for a person other than the Seller to remedy the defect(s) in the Goods and any damage to other property arising directly or indirectly out of the defect(s) in the Goods, in which event the Seller shall indemnify Nualight on demand against all costs incurred in connection with such remedial works and/or supply replacement goods.

12.3 The provisions of these terms and conditions shall apply to any goods supplied by the Seller to Nualight in place of any defective Goods.

12.4 The warranties set out in Clause 12 are in lieu of all terms, conditions and warranties on the part of the Seller that may be implied by law.

13. CONFIDENTIALITY

13.1 The Seller shall at all times keep confidential the Confidential Information and shall not, without the prior written consent of Nualight, use, disclose, copy or modify the Confidential Information other than as necessary for the exercise of its rights, and performance of its obligations, under the Agreement.

13.2 The Seller undertakes to disclose Confidential Information only to those of its officers, employees, agents and Sellers to whom, and to the extent to which, such disclosure is necessary for the exercise of its rights and performance of its obligations under the Agreement, and to procure that such persons are made aware of, and agree in writing to observe the obligations of confidentiality in sub-clause 13.1.

13.3 The Seller shall give notice to Nualight of any unauthorised use, disclosure, theft or other loss of the Confidential Information immediately upon or as soon as practicable after becoming aware of it.

13.4 The provisions of sub-clauses 13.1 and 13.2 shall not apply to information that:

- (a) was, at the time of receipt by the Seller, in the public domain;
- (b) has, after receipt by the Seller, entered the public domain through no act or omission of the Seller, its servants, agents, or contractors; or
- (c) by law or by any court or order of any governmental or regulatory authority required to be disclosed, to the extent of the relevant disclosure requirement.

13.5 If the Seller is required by law or by any order of any court or governmental or regulatory authority to disclose the Confidential Information, it shall promptly notify Nualight of receipt of notice of that requirement and, at the request and cost of Nualight, will assist it in opposing any such disclosure.

13.6 The existence and terms of the Agreement are confidential any may not be disclosed by the Seller without Nualight's consent. In particular, the Seller shall not refer to Nualight or any information relating to the Agreement in any promotional material of any nature without the prior written approval of Nualight.

13.7 The Seller shall, at the request of Nualight from time to time, promptly deliver to Nualight or destroy all the Confidential Information in its possession or control.

14. INDEMNITY

14.1 The Seller shall indemnify and keep indemnified Nualight (on demand) from and against all Losses suffered or incurred by Nualight arising out of or in connection with any of the following:

- (a) any injury or death to any person or in respect of any loss of or damage to any property caused by or arising out of any act, omission or negligence of the Seller, its servants, agents, employees or contractors in connection with the Agreement; or
- (b) any damage caused by the Goods or any defects therein owing to the act, omission or negligence of the Seller, or any of its employees, servants, agents or contractors.

15. FORCE MAJEURE

15.1 No party shall be liable for its inability or delay in performing any of its obligations under the Agreement if such inability or delay is caused by an Event of Force Majeure. The party claiming the Event of Force Majeure will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and shall take all reasonable steps to overcome the delay or stoppage.

15.2 If performance of a material and substantial obligation under the Agreement is prevented by any Event of Force Majeure for a continuous period of 90 days or more, then the party for whose benefit the affected obligation would have been performed shall be entitled, by the giving of notice in writing to the other party, immediately to cancel this purchase order and neither party shall be liable to the other for such cancellation.

16. TERMINATION

16.1 **Duration:** The Agreement shall come into effect on the date of the Order, and shall continue in full force and effect unless terminated sooner by under sub-clause 16.2 (*early termination by Nualight*) sub-clause 16.3 (*termination for Event of Default*) or sub-clause 15.2 (*force majeure*).

16.2 **Early termination by Nualight:** Nualight may terminate the Agreement at any time by giving 30 days' notice in writing to that effect to the Seller.

16.3 **Termination for Event of Default:** The occurrence of an Event of Default in relation to the Seller will constitute repudiation (but not a termination) of the Agreement by the Seller (whether the occurrence of that Event of Default is voluntary, involuntary or occurs by operation of law or pursuant to any decree or order of any court). If an Event of Default occurs and is continuing in relation to the Seller, then Nualight may, at its option (and without prejudice to any other rights or remedies which it may have under the Agreement or otherwise):

- (a) suspend the operation of the Agreement for such period of time as it, in its absolute discretion, sees fit; or
- (b) accept such repudiation and by notice to the Seller and with immediate effect terminate the Agreement (but without prejudice to the continuing obligations of the Seller under the Agreement) whereupon all rights of the Seller under the Agreement shall cease; or
- (c) proceed by appropriate court or other action to enforce performance of the Agreement and/or to recover damages for the breach of the Agreement.

16.4 For the purposes of the Agreement, each of the following shall be an Event of Default:

- (a) the Seller fails to comply with any obligation on its part under the Agreement which failure is, in the opinion of Nualight, material, and

either that failure is not susceptible to remedy or, if it is susceptible to remedy, it is not remedied within 14 days of notice having been given by Nualight to the Seller requiring that failure to be remedied;

- (b) the Seller is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Seller suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness; or
- (c) any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Seller; or any liquidator, receiver or examiner is appointed to or in respect of the Seller or any of its assets.

16.5 The termination of the Agreement shall be without prejudice to the rights of each of the parties accrued up to the date of termination.

16.6 The provisions of this sub-clause and Clauses 9.2, 11 (*intellectual property*), 12 (*warranties*), 13 (*confidentiality*), 14 (*indemnity*) and, to the extent applicable, 17 (*general*) shall survive the termination the Agreement however it arises, and shall continue to bind the Seller without limit in time.

16.7 Upon termination of the Agreement (for whatever reason):

- (a) the Seller shall cease to be bound to deliver and Nualight shall cease to be bound to receive delivery of any further Goods;
- (b) Nualight shall cease to be bound to pay that part of the price which relates to Goods which have not been delivered;
- (c) Nualight shall not be liable for any loss or damage whatever arising from such termination; and
- (d) the Seller shall return or, at the request of Nualight, destroy (at its own cost) all Nualight Materials and Confidential Information in its possession or control.

17. GENERAL

17.1 Nothing in the Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties or any of them, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.

17.2 Each party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by any other party to implement the Agreement.

17.3 If the whole or any part of a provision of the Agreement is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of the remainder of the provision in question or any other provision of the Agreement

17.4 The Seller may not, without the prior written consent of Nualight:

- (a) assign, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under the Agreement; or
- (b) purport to transfer, sub-contract or delegate any of its obligations under the Agreement.

17.5 Each of the rights of each party under the Agreement may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that party may have under the Agreement, law or

otherwise; and may be waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.

17.6 Any amendment to the Agreement must be in writing and duly signed for and on behalf of each of the parties to the Agreement.

17.7 The Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

17.8 The Agreement shall be governed by, and construed in accordance with, the laws of Ireland.

17.9 This sub-clause 17.9 is for the benefit of Nualight only. Subject as provided below, the Irish courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement and the parties submit to the exclusive jurisdiction of the Irish courts. Nothing in this clause limits the right of Nualight to bring proceedings against the Seller arising out of or in connection with the Agreement:

- (a) in any other court of competent jurisdiction; or
- (b) concurrently in more than one court of competent jurisdiction.

18. INTERPRETATION

18.1 In the Agreement:

“**Affiliate**” means, in relation to a person, any other person which controls, is controlled by or is under common control with that first person; and for this purpose “control” means possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise;

“**Confidential Information**” means any and all information relating to Nualight or its Affiliates or licensors which is disclosed to the Seller and/or to which the Seller has access, whether in oral, written or electronic form or by way of model or in other tangible form and whether before, on or after the date of the Agreement including (without limitation): (i) technical, commercial, scientific and other data, processes and information relating to, amongst other things, products developed or being developed by Nualight or its Affiliates and research and development proposals or projects of Nualight or its Affiliates; and (ii) information relating to the business affairs and activities of Nualight or its Affiliates (including, without limitation, all information relating to, or comprised in, customer and supplier information, business, financial, customer, product and service development plans, forecasts, strategies, names and expertise of employees and consultants);

“**Event of Force Majeure**” means an act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; labour dispute including but not limited to strike, lockout or boycott (save were such labour dispute is induced by the party so incapacitated);

“**Intellectual Property Rights**” means all intellectual property rights including without limitation, patents, inventions, copyright (including but not limited to all rights in respect of software), trade marks, database rights, design rights, topography rights, whether or not any of these is registered and including any applications for registration of any such rights, know-how, confidential information and trade secrets (including designs, processes or products that are to become or may become the

subject of an application as aforesaid) and all rights or forms of protection of a similar nature or having similar effect to any of these that may exist anywhere in the world;

“**Nualight**” means Nualight Sales Limited, a company incorporated under the laws of Ireland with registered number 529808 having its registered office at Cork Business & Technology Park, Model Farm Road, Cork, Ireland;

“**Nualight Materials**” means all materials, samples, drawings, specifications and tooling provided by Nualight to the Seller;

“**Loss**” includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense, fee, penalty or fine;

“**Seller**” means the sole trader, body corporate, partnership or legal entity identified as such in the Order; and

“**Seller Materials**” means all drawings, reports, specifications, calculations and other similar documents provided by or on behalf of the Seller to Nualight as part of its design in connection with the Goods.

18.2 In the Agreement, unless the contrary intention is stated, a reference to:

- (a) the singular includes the plural and vice versa;
- (b) either gender includes the other;
- (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (d) a person includes that person’s legal personal representative, permitted assigns and successors;
- (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland;
- (f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (g) a Recital, Clause or Schedule, is a reference to a recital, clause or schedule of the Agreement;
- (h) a statute, by-law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time, and to any by-law, regulation, delegated legislation or order made thereunder;
- (i) ‘including’ means comprising, but not by way of limitation of any class, list or category;
- (j) ‘writing’ shall include a reference to any electronic mode of representing or reproducing words in visible form; and
- (k) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

18.3 Headings are to be ignored in the construction of the Agreement.

